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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके

Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय प्राधिकारियों द्वारा जारी किये गये विधिक आदेश और अधिसूचनाएं

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) by Central Authorities (other than the Administration of Union Territories)

ELECTION COMMISSION OF INDIA

New Delhi, the 11th October, 1972

ORDER

S.O. 3848.—Whereas the Election Commission is satisfied that Shri Nasiruddin Ahammad, Village Bijbari, P.O. Goalpokhar, District West Dinajpur, West Bengal, a contesting candidate for general election to the West Bengal Legislative Assembly from 26-Goalpokhar constituency held in 1971 has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951 and the Rules made thereunder :

2. And whereas the said candidate, even after due notice has not given any reason or explanation for the failure and the Election Commission is further satisfied that he has no good reason or justification for the failure;

3. Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Nasiruddin Ahammad to be disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. WB-LAY26/71(2)]

By order,

भारत निर्वाचन आयोग

नई दिल्ली 11 अक्तूबर, 1972

आदेश

का० आ० 3848—यतः, निर्वाचन आयोग का समाधान हो गया है कि 1971 को हुए पश्चिमी बंगाल के साधारण निर्वाचन के लिए 26-गोलपोखर सभा निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री नासिरुद्दीन अहमद, गांव बीजबाड़ी, पो० गोलपोखर, जिला पश्चिमी दिनाजपुर लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदधीन तथा बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहे है।

और यतः, उक्त उम्मीदवार ने, उसे सम्यक सूचना दिये जाने पर भी, अपनी इस असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है; तथा निर्वाचन आयोग का यह भी समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है।

अतः, अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री नासिरुद्दीन अहमद को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरर्हित घोषित करता है।

[सं० प० बं०-विस०/26/71(2)]

आदेश से,

The 26th October, 1972

ORDER

S.O.3849.—Whereas the Election Commission is satisfied that Shri Biswas Mozaffar Hossain, Village Char Nabinganj, P.O. Notiadanga, District Nadia, West Bengal, a contesting candidates for general election to the House of the People from 10-Krishnagar parliamentary constituency held in 1971, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951 and the Rules made thereunder:

2. And whereas, the said candidate, even after due notice has not given any reasons or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure;

3. Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Biswas Mozaffar Hossain to be disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

By order,
[WB-HP/10/71(3)]

दिनांक 26 अक्तूबर, 1972

आदेश

का० आ० 3849—यतः, निर्वाचन आयोग का समाधान हो गया है कि 1971 में हुए लोक सभा के निर्वाचन के लिए 10—कृष्ण नगर संसदीय निर्वाचन-क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री बिस्वास मोजफ्फर हुसैन ग्राम चार नबीनगंज, पो० आ० नोटियाडांगा, जिला नदिया, पश्चिमी बंगाल लोक प्रतिनिधित्व अधिनियम 1951 तथा तद्धीन बनाए गए नियमों द्वारा यथा अपेक्षित अपनेनिर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और इस यतः उक्त उम्मीदवार ने, उसे सम्यक सूचना दिये जाने पर भी अपनी इस असफलता के लिए कोई कारण, अथवा स्पष्टीकरण नहीं दिया है; तथा आयोग का यह भी समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण अथवा न्यायौचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री बिस्वास मोजफ्फर हुसैन को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरर्हित घोषित करता है।

आदेश से

[सं० प० बं-लो० स०/10/71(3)]

ORDER

S.O. 3850.—Whereas the Election Commission is satisfied that Shri Alisur Rahman, R-180, Akra Road, Calcutta-24, West Bengal, a contesting candidate for general election to the House of the People from 16-Diamond Harbour parliamentary constituency held in 1971, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas, the said candidate, even after due notice has not given any reasons or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure.

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Alisur Rahman to be disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. WB-BP/16/71(4)]

By order,
A. N. SEN, Secy

आदेश

का०आ० 3850—यतः, निर्वाचन आयोग का समाधान हो गया है कि 1971 में हुए लोक सभा के साधारण निर्वाचन के लिए 16-डायमण्ड हारबर संसदीय निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री अलीसुर रहमान, आर-183, अकरा रोड, कलकत्ता-24, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा यथा अपेक्षित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहे है;

और, यतः, उक्त उम्मीदवार ने, उसे सम्यक सूचना दिये जाने पर भी, अपनी इस असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है; तथा निर्वाचन आयोग का यह भी समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री अलीसुर रहमान को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरर्हित घोषित करता है।

[सं० प० बं०-लो० स० 16/71(4)]

आदेश से

ए० एन० सेन, सचिव,

New Delhi, the 21st October, 1972

ORDER

S.O. 3851.—Whereas the Election Commission is satisfied that Shri Gyan Chand Verma, House No. 14-2-28, Chandanwadi, Gosha Mahal Hyderabad-12, a contesting candidate for the general election to the Andhra Pradesh Legislative Assembly from 210-Sitarambagh constituency, has failed to lodge an account of his election expenses at all as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is further satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Gyan Chand Verma to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[AP-LA/210/72.]

By order,
B. N. BHARDWAJ, Secy.

नई दिल्ली, 21 अक्तूबर, 1972

आदेश

का० आ० 3851—यतः, निर्वाचन आयोग का समाधान हो गया है कि आन्ध्र प्रदेशविधानसभा के लिए साधारण निर्वाचन के लिए 210-सीतारामबाग निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री ज्ञान चन्द वर्मा, मकान नं० 14-2-28, चन्दनवाड़ी, गोशामहल, हैदराबाद लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और, यतः, उक्त उम्मीदवार ने उसे सम्यक सूचनाएं दिए जाने के पश्चात् भी अपनी असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं

दिया है तथा निर्वाचन आयोग का यह भी समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः, अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री ज्ञान चन्द वर्मा को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए, इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरर्हित घोषित करता है।

[सं० आ० प्र०-वि०स/210/72]

आदेश से,

बी० एन० भारद्वाज, सचिव

MINISTRY OF INDUSTRIAL DEVELOPMENT

(Department of Internal Trade)

New Delhi, the 31st October, 1972

S.O.3852.—The Central Government, in consultation with the Forward Markets Commission, having considered the application for renewal of recognition made under Section 5 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952) by the Surrendranagar Cotton, Oil and Oilseeds Association Limited, Surrendranagar, and being satisfied that it would be in the interest of the trade and also in the public interest so to do hereby grants in exercise of the powers conferred by Section 6 of the said Act, recognition to the said Association for a further period of one year, from the 23rd Novem, ber 1972 to the 22nd November, 1973 (both days inclusive) in respect of forward contracts in kapas.

2. The recognition hereby granted is subject to the condition that the said Association shall comply with such directions as may from time to time be given by the Forward Markets Commission.

[No. 12(9)-I.T./72]

Y. A. RAO, Under Secy.

औद्योगिक विकास मंत्रालय

(आंतरिक व्यापार विभाग)

नई दिल्ली, 31 अक्तूबर, 1972

का० आ० 3852— केन्द्रीय सरकार सुरेन्द्र नगर कॉटन आयल एण्ड आयल सीड्स एसोसिएशन लिमिटेड, सुरेन्द्रनगर के पुनर्नवीकरण के लिए अग्रिम संविदा (विनियमन) अधिनियम, 1952 (1952 का 74) की धारा 5 के अधीन दिए गए आवेदन पर, वायदा बाजार आयोग से परामर्श करके, विचार कर लेने पर, और अपना यह समाधान हो जाने पर कि ऐसा करना व्यापार के हित में और लोकहित में भी होगा, उक्त अधिनियम की धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त एसोसिएशन को कपास की अग्रिम संविदाओं की बाबत, 23 नवम्बर, 1972 से लेकर 22 नवम्बर, 1973 तक, जिनमें ये दोनों दिन सम्मिलित है, एक वर्ष की अतिरिक्त कालावधि के लिये मान्यता प्रदान करती है।

2. एतद्द्वारा प्रदत्त मान्यता इस शर्त के अध्यधीन है कि उक्त संगम वायदा बाजार आयोग द्वारा समय समय पर दिए जाने वाले निदेशों का अनुपालन करेगा।

[सं० 12(9)-आई० टी०/72]

वाई० ए० राव, अवर सचिव

MINISTRY OF FOREIGN TRADE

New Delhi, the 18th November, 1972.

ORDER

S.O. 3853.—In exercise of the powers conferred by section 17 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby makes the following rules, further to amend the Export of Vacuum Flasks (Inspection) Rules, 1968, namely :—

1. (1) These rules may be called the Export of Vacuum Flasks (Inspection) Amendment Rules, 1972.

(2) They shall come into force at once.

2. In rule 4 of the Export of Vacuum Flasks (Inspection) Rules, 1968, to sub-rule (5), the following proviso shall be added, namely :—

"Provided that where the agency is not so satisfied, it shall within the said period of seven days refuse to issue such certificate and communicate such refusal to the exporter along with the reasons therefor."

[No. 60(40)/67-EIEP]

विदेश व्यापार मंत्रालय

नई दिल्ली, 18 नवम्बर, 1972

आदेश

का० आ० 3858— निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 17 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार निर्यात फ्लास्क का निर्यात (निरीक्षण) नियम, 1968 में और संशोधन करने के लिए एतद्द्वारा निम्नलिखित नियम बनाती है, अर्थात :—

1. (1) इन नियमों का नाम निर्यात फ्लास्क का निर्यात (निरीक्षण) संशोधन नियम, 1972 होगा।

(2) ये तुरत प्रवृत्त होंगे।

2. निर्यात फ्लास्क का निर्यात (निरीक्षण) नियम, 1968 के नियम 4 के, उप-नियम (5) में निम्नलिखित परन्तुक जोड़ा जाएगा, अर्थात् :—

"परन्तु जहां अभिकरण का इस प्रकार समाधान नहीं होता है, वहां वह सात दिनों की उक्त अवधि के भीतर ऐसा प्रमाण-पत्र जारी करने से इंकार कर देगा और इसके लिए कारणों के साथ-साथ निर्यात-कर्त्ता को ऐसे इंकार की संसूचना देगा।"।

[सं० 60(40)67-नि०नि० तथा सं०]

ORDER

S.O. 3854.—Whereas for the development of the export trade of India certain proposals for amending the notification of the Government of India in the Ministry of Foreign Trade No. S.O. 2137 dated 5th June, 1970 regarding Dried fish were published as required by sub-rule (2) of rule 11 of the Export (Quality Control and Inspection) Rules, 1964 in the Gazette of India Part II, Section 3, Sub-section (ii) dated the 27th May, 1972 under the notification of the Government of India, Ministry of Foreign Trade No. S.O. 1252 dated the 27th May, 1972.

And, whereas, objections and suggestions were invited till the 26th June, 1972 from the persons likely to be affected thereby;

And, whereas, the said Gazette was made available to the public on 27th May, 1972;

And, whereas, the objections and suggestions received from the public on the said draft have been considered by the Central Government.

Now, therefore, in exercise of the powers, conferred by section 6 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government being of the opinion that it is necessary and expedient so to do for the development of the export trade of India, hereby makes the following further amendment to the notification of the Government of India in the Ministry of Foreign Trade No. S.O. 2137 dated the 5th June, 1970, namely:—

In the said notification, in Annexure II, in the entries against serial No. 11,

(1) in the entries under column 8, for item (ii), the following item shall be substituted, namely:—

"(ii) 25 per cent if shipped otherwise";

(2) for the existing entry under column 9, the following entry shall be substituted, namely:—

"The broken pieces shall not exceed 15 per cent by weight. Spoiled pieces, eyes, shells and tails, excluding the broken pieces shall not exceed 2 per cent by weight".

[No. 6 (19)/71-EI&EP.]

M. K. B. BHATNAGAR,
Deputy Director (Export Promotion)

आदेश

का० आ० 3854.— यत. भारत के निर्यात की व्यापार के विकास के लिए भारत सरकार के विदेश व्यापार मन्त्रालय की सूचनाई हुई मछली सबंधी अधिसूचना सं० का० आ० 2137, ता० 5 जून, 1970 में संशोधन करने के लिए कतिपय प्रस्ताव निर्यात (क्वालिटी नियन्त्रण निरीक्षण) नियम 1964 के नियम II के उप-नियम (2) द्वारा यथा अपेक्षित भारत सरकार के विदेश व्यापार मन्त्रालय की अधिसूचना स० का० आ० 1252, ता० 27 मई, 1972 के अन्तर्गत भारत के राजपत्र, भाग 2, खण्ड 3, उपखंड (2), तारीख 27 मई 1972 में प्रकाशित किए गए थे।

और यत. उनसे संभाव्यत: प्रभावित होने वाले व्यक्तियों से 26 जून, 1972 तक आक्षेप तथा सुझाव मांगे गए थे।

और यत. उक्त, राजपत्र जनता को 27 मई, 1972 को उपलब्ध करा दिया गया था, और यत: प्रारूप पर जनता से प्राप्त आक्षेपों और सुझावों पर केन्द्रीय सरकार ने विचार कर लिया है।

अत: अब, निर्यात (क्वालिटी नियंत्रण तथा निरीक्षण) अधिनियम, 1963, (1963 का 22) की धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, यह राय होने पर कि भारत के निर्यात व्यापार के विकास के लिए ऐसा करना आवश्यक तथा समीचीन है, एतद्द्वारा भारत सरकार के विदेश व्यापार मन्त्रालय की अधिसूचना सं० का० आ० 2137 ता० 5 जून, 1970 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में, उपाबन्ध 2 में, क्रम स० II के सामने प्रविष्टियों में,

(1) स्तम्भ 8 के अधीन प्रविष्टियों में मद (ii) के स्थान पर निम्नलिखित मद रखी जाएगी, अर्थात् :—

"(ii) "25 प्रतिशत, यदि अन्यथा पोत से भेजी गई हो"।

(2) स्तम्भ 9 के अधीन विद्यमान प्रविष्ट के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात् :—

"टूटे टुकड़े भार में 15 प्रतिशत से अधिक नहीं होंगे। बेकार टुकड़े, आंखें गदे तथा पूछें, टूटे टुकड़ों को छोड़ कर, भारत में 2 प्रतिशत से अधिक नहीं होंगे।"

[स० 6(19)/71-नि० नि० तथा नि० स०]

एम०के०बी० भटनागर, उप निदेशक
निर्यात संवर्धन

MINISTRY OF LABOUR AND REHABILITATION

(Department of Labour and Employment)

Office of the Chief Labour Commissioner (Central)

New Delhi, the 30th October, 1972

ORDER

S.O. 3855.—Whereas an application has been made under section 19(b) of the Payment of Bonus Act, 1965 by Messrs. Central Provinces Manganese Ore Co. Ltd. (employer) in relation to their establishments mentioned in the Schedule below for extension of the period for the payment of bonus to their employees for the accounting year ending on 31st December, 1971

And, whereas, being satisfied that there are sufficient reasons to extend the time I have, in exercise of the powers conferred on me by the proviso to clause (b) of Section 19 of the said Act read with the notification of the Government of India in the Ministry of Labour and Employment No. WB, 20(42)/65 dated the 28th August, 1965, passed order on 13th October, 1972 extending the period for payment of the said bonus by the said employer by two months (i.e. up to 31st October, 1972). from the last date for payment of bonus under clause (b) of Section 19 of the Act.

Now this is published for information of the employer and all the employees of the said establishment.

THE SCHEDULE

Name and address of the employer(s)	Establishment(s)
M/s. Central Provinces Manganese Ore Co. Ltd. 3, Mount Road Extension, Nagpur, (Maharashtra).	Ballapur Hamesha (Dongri Buzurg Mine Distt. Bhandra

[No. BA. 16(21)/72-LS.I.]

R. J. T. D. MELLO,
Chief Labour Commissioner, (Central).

श्रम और पुनर्वास मंत्रालय

मुख्य श्रम आयुक्त (केन्द्रीय) का कार्यालय

श्रम और रोजगार विभाग

नई दिल्ली 30 अक्तूबर 1972

आदेश

का० आ० 3855.— यत: मेसर्स मैण्ट्रल प्रोविन्सिस मैंगनीज ओर क० लिमिटेड (नियोजक) ने नीचे की अनुसूची में वर्णित अपने स्थापना के सम्बंध में 31-12-1971 को समाप्त होने वाले लेखा वर्ष के लिए अपने कर्मचारियों को बोनस के संदाय की कालावधि को बढ़ाने के लिए बोनस संदाय अधिनियम, 1965 की धारा 19 (ख) के अधीन आवेदन दिया है।

और यत: यह समाधान हो जाने पर कि समय बढ़ाने के लिए पर्याप्त कारण है, मैंने भारत सरकार के श्रम और रोजगार मंत्रालय की अधिसूचना स० डब्ल्यू बी-20(42)/65 तारीख 28 अगस्त, 1965 के साथ पठित उक्त अधिनियम की धारा 19 के खण्ड (ख) के परन्तुक द्वारा मुझे प्रदत्त शक्तियों का प्रयोग करते हुए 13-10-1972 को उक्त नियोजक द्वारा उक्त बोनस के संदाय की कालावधि को अधिनियम की धारा 19 के खण्ड (ख) के अधीन बोनस के संदाय की अंतिम तारीख से 2 महीने (अर्थात् 31-10-1972 तक) बढ़ाने का आदेश दे दिया है।

अब इसे उक्त स्थापन के नियोजक और सभी कर्मचारियों की सूचना के लिए प्रकाशित किया जाता है।

अनुसूची

नियोजक/नियोजकों का नाम और पता	स्थापन
मैसर्स मैण्ट्रल प्रोविंसिस मैंगनीज ओर को० लिमिटेड, 3-माउंट रोड़, एक्सटेन्शन नागपुर।	बालापुर होमेशा (डोंगरी बुजुर्ग माइन) जिला भान्द्रो

[सं० बी० ए० 16(21)/72-एल०एस०आई०]

आर० टी० जे० डी० मेलो
मुख्य श्रम आयुक्त (केन्द्रीय)

New Delhi, the 4th November, 1972

S.O. 3856.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, No. 1, Dhanbad, in the industrial dispute between the employers in relation to the management of Balihari Colliery of Messrs Balihari Colliery Company (Private) Limited, Post Office Kusunda, District Dhanbad and their workmen, which was received by the Central Government on the 31st October, 1972.

[No. 2/46/68-LRII.]

KARNAIL SINGH, Under Secy.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF A REFERENCE UNDER SECTION 10(1)(D) OF THE INDUSTRIAL DISPUTES ACT, 1947.

REFERENCE NO. 28 OF 1968

PARTIES :

Employers in relation to the Balihari Colliery of Messrs Balihari Colliery Company (Private) Limited P.O. Kusunda, District Dhanbad.

AND

Their Workmen.

PRESENT : Shri A. C. Sen,
Presiding Officer.

APPEARANCES :

For the Old Employers : Shri S. S. Mukherjee, Advocate with Shri B. Joshi, Advocate.

For Bharat Coking Coal Company Limited, Added as a party vide order No. 23, dated 24th March, 1972 : Shri J. N. P. Sahi, Labour and Law Adviser.

For the Workmen : Shri T. P. Choudhury, Advocate with Shri S.V. Acharior, General Secretary, Hindustan Khan Mazdoor Sangh.

STATE : Bihar INDUSTRY : Coal.

Dhanbad, dated the 23rd October, 1972.

AWARD

The present reference arises out of Order No. 2/46/68-LRII dated New Delhi, the 2nd May, 1968 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :

"Whether the action of the management of Balihari Colliery of Messrs Balihari Colliery Company (Private) Limited, Post Office Kusunda, District Dhanbad and Messrs Industrial Supplies (Private) Limited raising Contractors of the said Balihari Colliery Company (Private) Limited, in refusing employment to the following workmen, with effect from the 9th October, 1967, was justified?"

Sr. No.	*Name*	*Designation.*
1.	Kangali Gorai	Haulage Engine Khalasi
2.	Mohan Modi	Onsetter
3.	Gendu Mahato	Trammer.
4.	Bhagia Gowalin,	Creche Aya.
5.	Jage Barhai	Trammerman
6.	Sakaldoo Dusadh	Chowkidar.
7.	B. Nani Orang	Shale Picker
8.	Bimola Korai	Shale Picker.
9.	Parbatia Mahatain	Shale Picker.
10.	Nandu Mahato	Chowkidar.
11.	Uma Mahato	Pump Khalasi.
12.	Somri Mahatain	Shale Picker.
13.	Karuna Orang	Shale Picker.
14.	Tukia Mahatain	Shale Picker.
15.	Ramanand Misir	Chowkidar.
16.	Masafir Dosadh	Chowkidar.
17.	Hridayanand Singh	Chowkidar.
18.	Sukar Lohar	Pump Khalasi.
19.	Bhutnath Sirkar	Attendance Clerk.
20.	Kuldip Singh	Munshi.
21.	Ram Dular Gope	Mining Sirdar.
22.	Mangra Kumar	Line Mistry.
23.	Ramon Bhuiya	Wagon Loader.

If not, to what relief are the workmen concerned entitled?"

2. The point for determination is whether the management was justified in refusing employment to the concerned workmen with effect from the 9th October, 1967. The case for the Balihari Colliery Company (Private) Ltd., is that the workmen concerned appeared to be old and infirm due to old age and that the management received reports that they were unable to discharge their duties satisfactorily on that account. The continuance in employment of old and infirm workmen not only endangered their own personal safety but also caused inconvenience to the employers themselves. The workmen concerned were directed by a letter dated 26.9.67 to appear for medical examination on 29th and 30th September, 1967 before a medical board of which the Medical Officer-in-Charge of Government Hospital, Kirkend was a member, and obtain a fitness certificate. In the said letter the workmen were informed that if they failed to appear for medical examination it would be presumed that they were physically unfit to perform their duties and that their work might be terminated. The workers concerned refused to appear for medical examination on some untenable plea. The management, therefore, terminated their services with effect from 19.10.67. The termination was bonafide and a termination simpliciter as per the condition of service envisaged by the Standing Orders.

3. Written statement and rejoinder on behalf of the workmen represented by the Hindustan Khan Mazdoor Sangh, Dhanbad was filed on 17.12.68. The case for the workmen as made out in their written statement is being stated briefly. The concerned workmen had been discharging their respective duties efficiently and there was no reason for thinking that they were unfit to perform their duties due to old age. The workmen protested against the order before the date fixed for medical examination stating that they were healthy, that the direction to appear for medical examination was unjustified, that such medical examination was contrary to their service conditions, that they were being victimised for their association with the Hindustan Khan Mazdoor Sangh and for their refusal to join the union sponsored by the management, that the proposed medical examination could not be impartial, that they were prepared to appear before a competent medical authority, and that alternatively, the medical board should be constituted in consultation with the Hindustan Khan Mazdoor Sangh. The management in disregard of the objection raised by the workmen discharged them with effect from 9th October, 1967.

4. According to the workmen they were in fact dismissed by way of punishment for disobeying the illegal direction to appear before the medical board without any chargesheet and domestic enquiry. They were victimised for their association with the Sangh. Similarly hundreds of other workmen lost their employment for upholding the banner of the Sangh and for their refusal to join the pupet union sponsored by the management.

5. No evidence has been adduced by the management to prove that there were sufficient ground for holding that the concerned workmen were too old to perform their duties properly. The workmen have filed eleven of the notices issued to the workmen on 26.9.67 asking them to appear before the medical board. They have been marked as Exts. W-4 series. In each of these notices the space for mentioning the age of the workmen has not been filled in. This shows that at least in the case of these 11 workmen the management was not sure about their ages. These notices except one start with these words: "You are very weak and infirm due to your old age which is above..... years.....". The remaining notice starts with these words:

"you are very weak and infirm due to your old age....."; no age was mentioned.

6. It may reasonably be inferred that the management was not aware of the ages of these eleven workmen. Still they were asked to appear before the medical board that was appointed to ascertain whether they were too old to perform their duties. It therefore, cannot be said that the notices, Exts. W4 series, were issued to the relevant workmen in good faith.

7. Exts. M1 series are the office copies of the notices, all dated 26.9.67 issued to the concerned workmen. Twenty one such notices have been filed. The office copies of the notices issued to serial nos. 12 and 16 have not been filed, but the workmen have filed the original of the notices issued to serial no. 12 which says nothing about age. Out of the 21 notices filed by the management ages have been mentioned only in 10. In the office copy of the notice issued to serial no. 23 age has been mentioned as above 57 years. This age appears to have been included by guess, because his date of birth is not to be found in Exts. M10, which is the abstract of name, designation, age etc., prepared from the Provident Fund Register maintained in the colliery. For the same reason the age mentioned in the notice issued to serial no. 9 appears to be guess work. The ages mentioned in the remaining 8 notices of Exts. M1 series appear to have been calculated with reference to the dates of birth mentioned in Exts. M10. So it is clear that no attempt was made to ascertain the ages of 15 out of 23 workmen to whom notices all dated 26.9.67 were issued. The act of the management in issuing those 15 notices cannot be said to have been issued bonafide.

8. Ext. M10 mentions the ages of 16 out of the 23 concerned workmen. Their ages range between 43 and 67 on the date of the notices namely 26.9.67. Yet all of them were described as very old. This shows that the decision to hold a medical examination to test the physical fitness of the workmen concerned was made in a most arbitrary manner.

9. There is nothing on record to show that there was at the relevant time any such rule of the Balihari Colliery Company Private Ltd., which required the concerned workmen to obey the order of the Manager of the colliery to appear for medical examination by any particular doctor or doctors nominated by him. The Standing Orders do not contain any such rule. Nor do the other documents filed by the management contain any such rule. The witnesses examined on behalf of the management have not adverted to any such rule.

10. The workmen got themselves examined by physicians of their choice. Serial Nos. 2, 3, 5, 6, 7, 13, 17, 19, 22 were examined by Dr. M. P. Singh, M.B.B.S., M.R.C.P. (London), D.C.H. (London), D.T.M. & H. (London) a highly qualified physician who was at that time working as the Civil Assistant Surgeon, Sadar Hospital, Dhanbad. They were examined between 5.10.67 and 9.10.67, that is to say a few days after the dates fixed by the management for their medical examination. All of them were found to be fit for their work in the colliery by Dr. M. P. Singh. Dr. M. P. Singh deposed before the Tribunal as witness no. 2 for the workmen. I have no reason to disbelieve the statements made by him in Court. I, therefore, hold that these nine workmen have succeeded in proving by Exts. W8 series that at the relevant time they were physically and mentally fit to perform their duties in the colliery.

11. Serial nos. 9, 8 and 14 got themselves examined by Dr. Basudeb Banerjee on 2.4.68, seven months after the date appointed for their medical examination. Each one of them was certified to be free from deafness, defective vision or any other infirmity likely to hamper his or her work in any way.

12. Serial no. 4 was medically examined by the Deputy Superintendent, Sadar Hospital, Dhanbad in December, 1968, more than a year after the date fixed for his medical examination by the Manager of the colliery and was certified to be fit to work as an "Aya". Serial no. 21, Ramdular was found fit by the Department of Mines as a result of medical examination held on 30.3.68. His underground Sirdar's certificate, Ext. W5 was endorsed as follows: "Certified that he was examined on 30.3.68 and found free from deafness defective eye sight or any other infirmity, mental or physical, likely to interfere with efficient discharge of his duties".

13. Witness no. 4 for the workmen has stated that serial no. 10 Nandu Mahato was examined by the then Medical Officer of the Kirkend State Dispensary, who, according to the management, was one of the members of the Board of Doctors constituted by the management for the medical examination of the concerned workmen towards the end of September, 1967. This witness has further stated that he made himself sure about the fitness of the concerned workmen by sending them to different doctors. I have no reason to disbelieve this witness. He was very straight forward in his deposition and his demeanover was that of a truthful witness. Ext. W6 is the certificate of fitness given by the Medical Officer of the State Dispensary.

14. It is not clear whether the remaining eight workmen were examined by any medical man to ascertain their fitness for the duties they had to perform in the colliery. But there is nothing on record to show that they suffered from any mental or physical disability which was likely to interfere with efficient discharge of their duties. I, therefore, hold that all the concerned workmen were both physically and mentally fit to discharge their duties in the colliery efficiently. The management was not justified in assuming that they were too old to perform their duties properly.

15. Ext. M3 is the office copy of one of the notices in identical language, sent to the concerned workmen informing them about their termination of services. From para one of the notice, Ext. M3, it is clear that the company presumed that the concerned workmen were unfit for work as they failed to appear for medical examination pursuant to the notice dated 26.9.67. No such presumption can be made from the failure of the workmen to appear for medical examination. The concerned workmen informed the management why they were opposed to the proposed medical examination. They also expressed their willingness to submit to medical examination by a competent medical authority. They apprehended that the medical examination by the doctors appointed by the management would not be fair and impartial. That being the position the management was not justified in inferring that the concerned workmen were unfit due to old age to perform their duties simply because they failed to appear for medical examination, especially when there was no rule at the relevant time authorising such medical examination.

16. It is contended by Shri S. S. Mukherjee that the concerned workmen having been discharged simpliciter in accordance with the relevant provisions of the Standing Orders, this Tribunal is not competent to look into the validity of their discharge. I cannot accept the contention. It is not a case of discharge simpliciter. An examination of one of the notices issued to the concerned workmen on 26.9.67, Exts. M1 series, will make the position clear. Let me analyse the notice dated 26.9.67 issued to Sri Ramdular Gope, serial no. 21. The notice was given on the footing that he was very weak and infirm due to his old age and that he was unable to discharge his normal duties. The management, it seems, came to a decision even before the proposed medical examination. In paragraph 2 of Ext. M1 the manager stated that company would be compelled to presume that the workmen was physically unfit for work, if he failed to appear for medical examination. In fact, there was no scope for presumption because the medical examination itself was arranged on the footing that the workman was weak and infirm due to old age and that he was unable to discharge his normal duties. It was further stated in the said notice of 26.9.67 that if the workmen failed to appear for medical examination that might lead to the termination of his service. According to the management, the workman concerned failed to appear for medical examination. It may, therefore, reasonably be inferred that his service has been terminated on account of his failure to appear for medical examination. Hence there cannot be any doubt that his discharge is not a discharge simpliciter. Similarly, the discharge of the rest of the concerned workmen was not a discharge simpliciter.

17. We may arrive at the same conclusion on an analysis of Ext. M3, being an office copy of one of the letters issued to the workmen concerned informing them about

their discharge from services with effect from October 9, 1967. Ext. M3 is dated 4.10.67. It was issued to Sri Hridayanand Singh, serial no. 17. The relevant portion of Ext. M3/ runs thus: "The said letter (dated 26.9.67) intimating to you the date, time and place fixed for your medical examination was delivered to you in time, but you....did not appear for the medical examination....The plea taken by you for not appearing.....is quite unsatisfactory. In the circumstances mentioned above and with the approval of the owner you are discharged from service with effect from October 9, 1967". Similar letters were issued to the rest of the concerned workmen. The passage quoted from Ext. M3 leaves no room for doubt that the concerned workmen were discharged on account of their failure to appear for medical examination. Therefore their dismissal was not a dismissal simpliciter.

18. As stated above there is nothing to indicate that there was at the relevant time any rule of the company under which the concerned workmen were required to obey the order of the manager to appear for medical examination by particular doctors nominated by the manager. That being the position the workmen concerned, at least 15 out of 23, were justified in relying on the certificates given by competent medical men of their choice. A charge of disobedience of orders, not enforceable under any rule cannot be the basis of any order of dismissal. Hence the orders passed by the manager on October 4, 1967 terminating the services of the concerned workmen with effect from October 9, 1967 are void and in-operative in law and are liable to be set aside. A reference may be made in this connection to the decision of the Supreme Court in Northern Railway Co-Operative Credit Society *Vs.* Industrial Tribunal, 1967 (II) L.L.J. 46. Thereunder similar circumstances the Supreme Court held that in the absence of any rule of the Co-Operative Society requiring the concerned workmen to obey the orders of the honorary Secretary to appear for medical examination by a particular doctor nominated by the Secretary the concerned workmen was justified in relying on the certificate by an Ayurvedic Practitioner (Vaid), and that the charge of disobedience of orders, not enforceable under any rule, could not be the basis of any order of dismissal.

19. Even if it be assumed that the orders dated 4.10.67 terminating the services of the concerned workmen amounted to a dismissal simpliciter, it cannot be said that the said orders were passed in good faith. Most of the notices all dated 26.9.67, issued to the workmen did not mention the respective ages of the workmen. The medical examination was merely an eye wash as the management already came to the conclusion that the concerned workmen were too old to discharge their duties properly even before the medical examination. According to witness no. 2 for the management the notices dated 26.9.67 were issued to the concerned workmen on the basis of the ages recorded in the Provident Fund Register. Ext. M10, says he, was prepared after a thorough scrutiny of the Provident Fund Register and he prepared Ext. M10 on the basis of the Provident Fund Fegister maintained in the colliery. Ext. M10 is the abstract of names, ages etc., prepared from the Provident Fund Register maintained in the colliery. Ext. M10 does not mention the dates of birth of seven of the concerned workmen. It is not clear how their ages were ascertained before issuing notices to them asking them to appear for medical examination. This shows that notices for medical examination were not issued in good faith to these seven workmen. Again in Ext. M10, the date of birth of serial no. 2 is stated to be 1908, whereas in form A (Coal Mines Provident Fund) his date of birth has been recorded as 1st July, 1918. Similarly the date of birth of serial no. 5 is 1.7.1908, according to Ext. M10, whereas according to Form A (Coal Mines Provident Fund) Ext. M22 series, his date of birth is 15.7.1915. According to Form A (Provident Fund) serial no. 21 is below fifty in 1967, whereas according to Ext. M10 he was above 60 in 1967. These discrepancies clearly show that Ext. M10, the abstract of age, is wholly unreliable.

20. It transpires from an annexure to the written statement filed by the workmen that a reference was made under section 10 of the Industrial Disputes Act to adjudicate a dispute between the management of the Balihari Colliery Co. Private Ltd., and its workmen over the retrenchment of 376 workmen of the said colliery, who were retrenched in 1966. It may reasonably be inferred that the 23 workmen concerned in the present dispute were in fact retrenched under the guise of dismissal for not appearing for medical examination. This method was adopted in order to avoid the legal liabilities of retrenchment.

21. The deposition of witness no. 5 for the workmen makes it abundantly clear that the management did not act in good faith in discharging the 23 concerned workmen, even assuming that their dismissal is dismissal simpliciter. I am giving a summary of his evidence. Since 1965 the company because of its internal difficulties began to make default in payment of wages, bonus and other legal dues of the workmen. The company was in arrears to the tune of several lacs. The union agitated in all possible manners. It submitted memorandum to the Union Labour Minister, staged demonstration and resorted to hunger strike. There were questions in Parliament and several letters were exchanged between the union and the Government. Thereafter there was a settlement between the employers and the union before the Conciliation Officer in March, 1966.

22. Witness no. 5 for the workmen has also given an account of the state of affairs that prevailed in the colliery after the appointment of the raising contractor. In February 1967 a company under the name and style of Industrial Supplies Private Ltd., was appointed as the raising contractor. The raising contractor began to dismiss in different ways the old employees of the colliery in order to destroy the strength of the union. The firm of raising contractor through its sub-contractor Jay Narayan Singh established a rival union known as the Balihari Colliery Mazdoor Union. The concerned workmen were discharged as they refused to join the new union. The above account as given by WW 5 leaves no room for doubt that the management did not act in good faith, in terminating the services of the workmen on the plea of their non-appearance for medical examination. I have no reason to disbelieve the account given by WW 5 as to the state of affairs in the colliery after the appointment of the raising contractor. The Supreme Court has held in Tata Oil Mills Co. Ltd., *Vs.* Their workmen (1964) (1) L.L.J. 9) that a discharge simpliciter permitted by the rules of service is liable to be set aside if it is found to be *malafide*.

23. According to the order of reference, the dispute is between the Balihari Colliery (Private) Ltd., and their raising contractors Messrs Industrial Supplies (P) Ltd., of the one part and their workmen of the other part. Hence the reference has been made on the footing that the concerned workmen and other workmen of the colliery are also the workmen of the raising contractors. Still the raising contractors have stated in their written statement that they have been unnecessarily made a party in the present reference because there is no employer-employee relationship between them and the concerned workmen. As raising contractors they come into direct contract with the workmen of the colliery. They are in a better position to say whether the concerned workmen were really too old to perform their duties properly. But they have not said anything about their fitness on the plea that there is no employer-employee relationship between them and the concerned workmen. It is clear that they have not placed before the Tribunal the facts known to them. Allegations against the raising contractors were not challenged in cross-examination by any one on behalf of the raising contractors. The Balihari Colliery Company Private Ltd., too has not disclosed the part played by the raising contractors in the matter of terminating the services of the concerned workmen. This also indicates that the Balihari Colliery Company (Private) Limited did not act in good faith in terminating the services of the concerned workmen

24 The above discussion leaves no room for doubt that the act of the management of Balihari Colliery of Messrs Balihari Colliery Co. (Private) Ltd., and Messrs Industrial Supplies (Private) Ltd., raising contractors of the Balihari Colliery Co. (Private) Ltd., in refusing employment to the concerned workmen with effect from the 9th October, 1967 was not justified. Now I come to the question of relief. Affidavits sworn by serial nos. 9, 11, 12, 14, 16, 21 and 23 have been filed and they have been marked as Exts. M 13 to M 19. They have declared in those affidavits that they are unable to continue in work being old and infirm and that they have received their full and final payments. By these affidavits they have waived their claim to any relief against the employers. Therefore, they are not entitled to any relief whatsoever from the employers. Ext. M 7 being an application to the Manager,

Balihari Colliery, by one Rajeswari Devi, claiming to be the widow of Ramanand Missir, serial no. 15, shows that Ramanand Missir died during the pendency of the proceedings in the Tribunal. Exts. M 8 and M 9 show that serial no. 17. Hridayanand Singh and serial no. 4 Bhagina Goalini died during the pendency of the reference in the Tribunal. The industrial dispute, so far as these three deceased workmen are concerned, came to an end with their death. Therefore the question of relief does not arise in their case. The rest, namely serial nos. 1, 2, 3, 5, 6, 7, 8, 10, 13, 18, 19, 20, 22 are entitled to be reinstated with back wages.

25. The Bharat Coking Coal Company Ltd., was added as a party by an order passed on 24.3.72, and the addition was made on the application of the Bharat Coking Coal Comapny Ltd., Serial Nos. 1, 2, 3, 5, 6, 7, 8, 10, 13, 18, 19, 20 and 22 are to be reinstated by the Bharat Coking Coal Company Ltd., with effect from the 1st of May, 1972 when the colliery of Balihari Colliery Company Private Ltd., vested in the Bharat Coking Coal Company Ltd., Balihari Colliery Company Private Ltd., is liable to pay the back wages of the aforesaid thirteen workmen with effect from the 9th October, 1967 upto the 30th of April, 1972. On the principle laid down by the Supreme Court in the case of Bihar State Road Transport Corparation vs. State of Bihar, A.I.R. 1970 S.C. 1217, Bharat Coking Coal Company Ltd., is also liable for back wages from the 9th October, 1967 to the 30th of April, 1972 as the successor-in-title of Balihari Colliery Company Private Ltd. In other words, Balihari Colliery Company Private Ltd., and Bharat Coking Coal Company Ltd., are jointly and severally liable for the back wages from the 9th October, 1967 to the 30th April, 1972. Industrial Supplies Private Ltd., is free from any liability because Balihari Colliery Co. Private Ltd., have accepted the position that they are the employers of the concerned workmen.

26. I accordingly make the following award. The action of the managements of Balihari Colliery Company Private Company Private Ltd., and Messrs Industrial Supplies (P) Ltd., and Messrs Industrial Supplies (P) Ltd., in refusing employment to the 23 workmen mentioned in the schedule to the order of reference was not justified. Bharat Coking Coal Company Ltd., is liable to reinstate serial nos. 1, 2, 3, 5, 6, 7, 8, 10, 13, 18, 19, 20 and 22, that is to say, Kangali Gorai, Mohan Modi, Gendu Mahato, Jage Barhai, Sakaldeo Dusadh, B. Nani Orang, Bimla Korai, Nandu Mahato, Karuna Orang, Sukar Lohar, Bhutnath Sirkar, Kuldip Singh and Mangra Kumar with effect from the 1st May, 1972. The aforesaid 13 workmen are also entitled to recover their back wages from 9th October, 1967 to 30th Ltd., and Bharat Coking Coal Company Ltd., are jointly and severally liable.

27. Let a copy of this award be forwarded to the Central Government under section 15 of the Industrial Disputes Act, 1947.

A. C. SEN, Presiding Officer.

New Delhi, the 4th November, 1972

S.O. 3857.—In pursuance of section 17 of the Industrial disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the management of East Nimcha Colliery of Messrs East Laikdih Colliery Company Private Limited, Post Office, Jaykaynagar, District Burdwan and their workmen, which was received by the Central Government on the 30th October, 1972.

[No. L/1912/131/71-LRII.]
KARNAIL SINGH, Under Secy.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

REFERENCE NO. 124 OF 1971

PARTIES :

Employers in relation to the management of East Nimcha Colliery,

AND

Their workmen.

PRESENT :

Sri S. N. Bagchi.—Presiding Officer.

APPEARANCES :

On behalf of Employers.—Sri B. P. Dabral, Chief Personnel Officer.

On behalf of Workmen.—Sri Sushobhan Roy, Advocate.

STATE : West Bengal INDUSTRY : Coal Mine

AWARD

By Order No. L/1912/131/71-LRII, dated 13th December, 1971, the Government of India, in the Ministry of Labour and Rehabilitation, Department of Labour and Employment, referred the following dispute existing between the employers in relation to the management of East Nimcha Colliery of Messrs East Laikdih Colliery Company Private Limited and their workmen, to this tribunal, for adjudication, namely:

"Whether the action of the management of East Nimcha Colliery of Messrs East Laikdih Colliery Company Private Limited, Post Office Jaykaynagar, District Burdwan, in dismissing the following 18 workmen with effect from the 28th June, 1971 is justified?

If not, to what relief are the said workmen entitled ?

Sl. No.	*Name*	*Designation.*
1.	Shri Hardeo Singh	Body Searcher
2.	,, Mahesh Prasad Sharma	Pit Munshi
3.	,, Biswanath Singh	do
4.	,, Surendra Prasad Singh	do
5.	,, Suresh Dutta Sharma	do
6.	,, Rampravesh Singh	Pump Khalasi
7.	,, Birendra Sharma	do
8.	,, Biswanandan Singh	do
9.	,, Sarjoo Singh	Timber Mistry
10.	,, Sajan Dhari Sharma	Electric Helper
11.	,, Srikant Sharma	Explosive carrier
12.	,, Abdesh Chowdhury	U. G. Trammer.
13.	,, Rameswar Yadav	do
14.	,, Jitan Yadav	do
15.	,, Sitaram Dusad	Pickminer
16.	,, Ramkebal Harijan	No. 2 Loader
17.	,, Umesh Koiri	Loader
18.	,, Chaturgun Chamar	Loader

2. A preliminary point was raised by the Officer representing the management regarding the jurisdiction of this tribunal in entertaining and adjudicating upon the dispute under reference on the ground that it was not an industrial dispute under Section 2(k) of the Industrial Disputes Act. In its written statement, paragraph 2, the management stated, "That there is no industrial dispute as per the reference since no dispute has been raised by the workmen in respect of the present matter. Dispute raised, if any has already been withdrawn." In paragraph 3 it is stated, "That the subject matter of the dispute is at best an individual dispute and has not converted itself into an industrial dispute. The management put the Union to prove that it is an industrial dispute". The union in paragraph 16 of its written statement stated, "That the concerned workmen sent their protest letters on 3.7.1971 to the company against the illegal and *malafide* dismissal orders and demanded the withdrawal of the said orders." In paragraph 17 of the written statement the union contends that the company did not pay any heed to the aforesaid representations of the workmen. Afterwards the union made representations to the company demanding the withdrawal of the dismissal orders and reinstatement of the concerned workmen with full back wages." The rest of the statements in the written statement of the management and of the union, espousing the cause of the workmen and representing the workmen in this proceeding need not be set out, having regard to the point as to the jurisdiction raised by the management.

3. It is the burden of the union to prove that the dispute under reference is an industrial dispute under Section 2(k) of the Industrial Disputes Act. It has been established since the decision in Raju's Caffe, a division Bench Judgment of the Madras High Court, reported in 1951 I LLJ p. 219 and concretised in the Supreme Court decision in the case of

Sindhu Resettlement Corporation Ltd. and Industrial Tribunal, Gujarat & Ors., 1968 I LLJ p. 834 and in the decision of the Delhi High Court in the case of Fedders Lloyd Corporation Private Limited and Ltd., Governor, Delhi & Ors., reported in F.L.R. 1970 (2) p. 343, that the union expousing the cause of the workmen is first required to serve the charter of demand on such authority of the management who is competent to give relief to the workmen concerned. If the authority of the management refuses to extend relief to the workmen as demanded, then the union espousing the cause of the workmen may approach the conciliatory authority. If conciliatory authority takes up the dispute and fails to conciliate the same, it has got to report such failure to the Government concerned, in this case the Central Government. The Central Government, if satisfied that there is an industrial dispute either in existence or apprehended, it may refer the dispute for adjudication by a competent Labour court or by a Tribunal under Section 10 of the Industrial Disputes Act. The Tribunal of the Labour court, as the case may be, before proceeding to adjudicate the dispute under a reference is required to determine whether the dispute under reference is an industrial dispute within Section 2(k) of the Industrial Disputes Act, if so, it will have jurisdiction to entertain and adjudicate upon the dispute. So, the burden lies, when the management has raised a preliminary point regarding the jurisdiction of the tribunal to entertain and adjudicate upon a dispute as the one at present, referred to for adjudication by this tribunal, solely on the union to establish that the union espousing the cause of the workmen first served the charter of demand on the authority of the management that could extend relief to the workmen as per charter of demand. Then the union is to establish that as the authority of the management that could grant relief on the charter of demand served by the union on behalf of the workmen on such authority refused to extend any relief on the charter of demand, the union espousing the cause of the workmen approached the conciliatory authority. The individual letter in the present case of each of the workmen referred to in paragraph 16 of the written statement of the Union has no relevance at all when the cause of the workmen was espoused by the union now representing the workmen in this proceeding as stated in paragraph 17 of the written statement filed on behalf of the workmen by the union itself In paragraph 17 of the written statement of the unions there are certain vague and imprecise words such as "representaions" and "company". The learned Advocate who appeared for he union in this proceeding was asked to explain whether the "representaions" meant charer of demand for the workmen, if so, whether it was in writing or oral. Then he was asked to explain if the charter of demand was in writing who the officer of the union that was authorised by the union to take up the cause of the workmen and to espouse their cause before the specific authority of the management i.e. of the company. He was further asked to explain that if the charter of demand was not in writing, the oral charter of damand, if made, was made by which of the officers of the union, authorised in that behalf by the union and to which of the authorities of the company. In paragraph 17 of the written statement there is only the word "representations" as well as the word "company". So, the learned Advocate having knowledge of the law of pleadings very fairly submitted that he could not explain what was meant by "representations" and who the authority of the company to whom the "representations" as stated in paragraph 17 of the written statement were made, and by whom. The learned Advocate fairly submitted that as the word "representations" in paragraph 17 of the written statement can be either oral or in writing, he was not in a position to submit that the representation was in writing or oral. He further submitted that as it had not been stated in paragraph 17 of the written statement that any officer of the union authorised by the union on that behalf made a verbal representation being the charter of demand for the workmen, he was not in a position to state if any officer of the union made verbal representation being the charter of demand for the workmen. The learned Advocate representing the union was asked to explain the meaning of the word 'company' which is a juridical personality. Company being a juridical personality acts through its executives such as the Board of Directors or any officer of the Company authorised by the Board of Directors to act in the manner as authorised by the Board of Directors of the Company. So the learned Advocate was asked to explain who was the authority of the company, whether any Director of the Board of Directors of the company or any authorised officer of the company authorised in that behalf by the Board of Directors that was approached with the "representations" being the charter of demand. The learned Advocate submitted that as in paragraph 17 of the written statement of the union it had not been stated specifically and pointedly that a particular authority of the company that could give relief on the charter of demand *i.e.* the representations made to the company had not been stated, he was not in a position to say to which of the authorities of the company that could give relief to the charter of demand *i.e.* the representation was approached by the union. So the learned Advocate representing the union could not explain whether the "representations" as stated in paragraph 17 of the written statement were made in writing or orally, nor could he explain with reference to the word "representations" stated in paragraph 17 of the written statement, as to which of the officers of the union authorised by the union in that behalf made the representation and to which of the authorities of the company. Attention of the learned Advocate was pointedly drawn to the vague and imprecise expressions "representations" and "company" in paragraph 17 of the written statement. The officer representing the company submitted that the vagueness and impreciseness of the statement in paragraph 17 of the written statement in the words "representations" and "company" prevented the management of the company to traverse either of such vague and indefinite expressions in paragraph 17 of the written statement of the union. He further submitted, that if the union now wanted to make out a case that a particular officer of the union authorised in that behalf by the union made oral demand relating to the dispute under reference and that to a particular authority of the company, the union should not be allowed to make out such a new case in the context of the expression "representations", "company" and "union" used in paragraph 17 of the written statement. He further submitted that as in paragraph 17 of the written statement the word "company" did not indicate that any particular authority of the company having power to grant relief on the "representations" was approached by the union, the union should not now be allowed to make out a new case that a particular officer or a particular Director of the company was approached by the Union. It was further submitted that the union should not be allowed to make out that a particular officer of the union authorised by the union in that behalf approached a particular authority of the company when such a case was not made in paragraph 17 of the union's written statement. In course of his submissions, the learned Advocate of the union stated that the "representations" were oral and that the person who made the representations was the General Secretary of the union. As regards "company", the learned Advocate, however, made no specific submission. So, there was no written representation nor service of any charter of demand by the union, and if it was served it cannot be determined from the written statement to which of the authorities of the company it had been served. So, there can be no question of refusal of the charter of demand, if imagined to have had been served orally and that by the "union" on the "company". The officer representing the management of the company in this proceeding emphatically submitted that there was no written or verbal representation *i.e.* service of charter of demand by the union to any of the authorities of the company that could give relief to the charter of demand, if it was served, either orally or in writing, by any of the officers of the union, if he was so authorised by the union in that behalf. He further submitted that on the statements made in paragraph 17 of the written statement the union should not be allowed to make out a new case on the date of hearing of the case and should not be allowed to put the management to a situation which the management was not in a position to meet having regard to the vagueness and impreciseness of the case made out in paragraph 17 of the written statement of the union.

4. In my order passed on 23-10-1972, after hearing the officer of the company representing the management in this case and the learned Advocate representing the union, I observed that having regard to the case made out in paragraph 17 of the written statement of the union, the Union would not be allowed to make out a new case in any other form violating the fundamental principles of the law of pleadings. The union cannot be allowed now to make out a case that the "representations" were oral and that it was made by the general Secretary of the union. But still the learned Advocate representing the union could not assert that the General Secretary of the union made the oral representations on being authorised by the union in that behalf before any of the specific authorities of the company that could, if served with the charter of demand on behalf of the workmen by the union through that General Secretary orally, have refused to extend relief on the

charter of demand. So, I ordered that on the materials on record *i.e.* on pleadings, I shall decide whether there has been an industrial dispute under Section 2(k) of the Industrial Disputes Act having regard to the principles established by the decision in Raju's Caffe's case and concertised in the decisions of the Supreme Court and the Delhi High Court in the cases already quoted above. So, both the parties were not allowed to adduce any evidence. I only looked into the specific portions of the pleadings of the parties referred to above and I came to this conclusion that before approaching the conciliating authority the union espousing the cause of the workmen did not serve either orally or in writing the charter of demand on behalf of the workmen to any of the authorities of the company that could either grant or refuse relief on the charter of demand if served by an authorised officer of the union being so authorised in that behalf by the union.

5. Therefore, the first limb that makes up in law an industrial dispute within Section 2(k) of the Industrial Disputes Act is wanting on the very face of the written statement of the union in paragraph 17 thereof. In other words, before approaching the conciliating authority with the demand relating to the dispute under reference, the union espousing the cause of the workmen, did not serve any charter of demand relating to the dispute under reference on behalf of the workmen on any of the authorities of the company that could either grant or refuse the charter of demand, if served by any officer of the union, so authorised on that behalf by the union itself. Therefore, the direct approach by the union espousing the cause of the workmen raising the dispute under reference before the conciliatory authority offends the law as laid down in the three decisions already set out in the earlier part of this award. Therefore, the dispute under reference is not an industrial dispute under Section 2(k) of the Industrial Disputes Act.

6. Accordingly, this tribunal is not competent to entertain the dispute and to adjudicate upon it. The reference is, therefore, rejected.

This is my award.

S. N. BAGCHI, Presiding Officer.

New Delhi, the 10th November, 1972

S.O. 3858.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Nagpur, in the industrial dispute between the employers in relation to the management of Ballarpur Colliery of Messrs Ballarpur Colliery Company Limited, Post Office Ballarpur, District Chandrapur (Maharashtra) and their workmen, which was received by the Central Government on the 30th October, 1972.

[No. 3/7/69-LRII.]

KARNAIL SINGH, Under Secy.

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

REFERENCE (CGT) No. 11 OF 1969

PRESENT :

Shri W. K. Almelkar, B.A.,LL.B.,
Presiding Officer

PARTIES :

The Management of Ballarpur Colliery of Messers Ballarpur Collieries Company Limited, Post Office Ballarpur (District Chandrapur) — Employer — *First party*

AND

Their Workmen — *Employees* — Second party

APPEARANCE:

For Employers: Shri Gadkari.

For Employees: Shri S. W. Dhabe, Advocate.

STATE—Maharashtra INDUSTRY—Colliery.

Nagpur, the 2nd October, 1972

AWARD

This is a reference made by the Government of India, Department of Labour and Employment, under Section 7A and Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 for the adjudication of an industrial dispute between the Management of Ballarpur Colliery of Messrs Ballarpur Collieries Company Limited And Their Workmen in respect of the following matter:

> "Whether the management of Ballarpur Colliery of Messrs Ballarpur Collieries Company Limited, was justified in dismissing Sarvashri Rajaram Ram Narayan Shukla, ex-Sand Slusher Khalasi and Anandi Ram Narayan Shukla, Hublage Khalasi with effect from the 17th May, 1969? If not, to what relief are the workmen entitled?"

2. The Maharashtra Pradesh Rashtriya Koyala Khadan Kamgar Sangh, Nagpur, representing the workmen at this colliery, filed a statement of claim on behalf of the workmen. It is stated that both these workmen Rajaram Ramnarain Shukla and Anandi Ramnarain Shukla are members of this union. Rajaram has put in 14 years service and his brother Anandi has put in 8 years service. Both are active members of the Union. It is denied that both these brothers had assaulted Loading Supervisor Indra Narayan Pande in the afternoon of 26-3-1969. The incident is alleged to have taken place at about 2.30 p.m. when Rajaram was on duty in his first shift. Anandi was on a weekly rest day. It is further alleged that the departmental enquiry held against both these workmen was conducted in disregard of the principles of natural justice. No opportunity was given to these workmen to cross-examine the witnesses examined by the management. These two workmen have not committed any misconduct under the Standing Orders and their dismissal is arbitrary and without any justification. They are dismissed by way of victimisation for their active trade union activities and because one of them, Rajaram had given evidence against the management in a riot case. It was therefore, prayed that the order of dismissal may be set aside and the management directed to reinstate in service both these workmen and also pay them full back wages.

3. The party No. 1 namely, the Management field a written statement and also a further rejoinder. It is contended that both these workmen have been duly dismissed under the Standing Orders after holding a departmental enquiry against them on 24-4-1969. The departmental enquiry was a sequal to the incident that took place in the afternoon on 26-3-69 when both these workmen beat up the Loading Supervisor Shri Indra Narain Pande while he was returning to the office of the Ballarpur Colliery from his work at the station. Shri Indra Narain Pande had lodged a written complaint with the management and the preliminary enquiry was then held by the Manager and since a *prima facie* case was established, a regular departmental enquiry was ordered against both the workmen. The departmental enquiry was conducted by Shri M. K. Kumar, an officer in the personnel department at the Head Office. Both the delinquents had participated in the enquiry. The management had examined 6 witnesses and they were all cross-examined by the delinquents who examined 2 witnesses in defence. The Enquiry Officer submitted his report and recommended that both the delinquents should be dismissed forthwith. The Manager, Ballarpur Colliery after obtaining sanction from the Head Office, dismissed both the workers with effect from 17-5-1969. The departmental enquiry was held in consonance with the principles of natural justice and every opportunity was given to the delinquents to meet the charges and put forth their defence. The Enquiry Officer had after hearing the evidence on both sides, came to the conclusion that both the workers were guilty of the misconduct and deserved to be dismissed forthwith. This finding of the Enquiry Officer cannot be scrutinised as a Court of appeal in this reference. It is further contended that the workers were *badli* workers working in the mine known as Ballarpur Colliery 1 & 2 pits. This mine has been innundated and closed from or about 24-8-70 and there is no working in this mine since then. After the

closure, the workers of this mine and the employer have arrived at a settlement dated 8-11-1970 and all the claims of the workers of the mine have been duly settled and so, this claim made by the workmen is not tenable. It is emphatically denied that these 2 workmen have been dismissed by way of unfair labour practice and/or victimisation.

4. In this case, the Party No. 1 namely, the management, has examined one witness and Party No. 2 has examined 5 witnesses including the 2 delinquents. The management has filed on record the true copies of the enquiry papers as Annexure 'A' to the written statement from pages 1 to 43. The original enquiry papers were brought into the Court and after formal proof, the same were returned and copies admitted in evidence.

5. In this case, it is not disputed that a departmental enquiry was held against both these delinquents by Shri M. K. Kumar, an Officer in the personnel department at the colliery Head Office at Nagpur. It was submitted by Shri Dhabe the learned Advocate for the party no. 2, that Shri M. K. Kumar had no authority or power to hold this departmental enquiry and that the departmental enquiry should have been held by the Manager himself. It is submitted that the Manager had no powers to delegate his authority to hold departmental enquiry to Shri M. K. Kumar. It may be noted that such a plea has not been taken in the statement of claim filed on behalf of the workmen. In this connection, Shri Dhabe placed reliance on Clauses 20(5), 23, 24, 25, 31(2) and 33 of the Standing Orders which were in force at the relevant time. It is pointed out that the scheme of the standing orders demonstrates that a departmental enquiry should be held by the Manager himself and should not be entrusted to any other officer of the colliery. I have carefully gone through the relevant clauses of the standing orders; but, in my opinion, the inference above stated cannot be spelled out. It is rightly pointed out by Shri Gadkari, representing the Management, that the standing orders do not contain any prohibition to entrust enquiry to any officer of the company other than the manager. In this connection it is pertinent to note that such an objection was not at any time raised by the delinquents in the course of enquiry. As I have pointed out, the enquiry in these case was held by an officer in the personnel Department of the Ballarpur Colliery. In *Ananda Bazar Patrika (Pvt.) Ltd.* V. *Their Employees* (1963 *II LLJ* 429), it was held by their Lordships of the Supreme Court that it is open to the employer to entrust an enquiry against a workman for his misconduct in the discharge of his duties to an outsider. There is no rule that the enquiry must be held in every case by an officer of the Company, and it cannot be said that a domestic enquiry is illegal or void merely because the person who held the enquiry was an outsider, and not an officer of the employer company. Such being the legal position, the aforesaid argument addressed by Shri Dhabe must be regarded as clearly misconceived and devoid of substance.

6. As I have pointed out, this is a case in which a regular domestic enquiry was held against both these delinquents. Both these workmen are dismissed following the findings recorded by the Enquiry Officer. So, the order of dismissal has been passed as a punishment after domestic enquiry. In such cases, there is a limited scope of the enquiry by the Tribunal. The Tribunal to which a dispute is referred for adjudication cannot act as a Court of Appeal and ordinarily it cannot substitute its own judgment for that of the employer. The Tribunal is justified in setting aside the order of dismissal made by the employer only in any of the three cases, namely, (i) when the order made is *mala fide* or there has been victimisation or unfair labour practice, or (ii) when the domestic enquiry has not been fair and proper, or (iii) when the finding against the workman is baseless or perverse. In this connection, it is enough to refer to the Supreme Court decision reported in 1958 *S.C.R.* 667—*Indian Iron & Steel Co. Ltd.* V. *Their Workmen*—.

7. In the instant case, it would be clear from the evidence of the enquiry officer as well as the enquiry papers filed on record that the departmental enquiry conducted against both the delinquents was quite fair and proper and that there was no violation or infraction of the rules of natural justice. Both these employees proceeded against had been informed clearly of the charges levelled against them. They had submitted their replies to the charge-sheets and repudiated the charges. Shri M. K. Kumar had been held a domestic enquiry on 24-4-69. An advance notice of this date was given to both the delinquents and they were present at the enquiry and had fully participated in the enquiry. The management had examined as many as 6 witnesses including the complainant and the victim Indra Narain Pande. They were all cross-examined by the delinquent Rajaram on behalf of himself and his brother Anandi. After the management had closed the evidence, both these delinquents were questioned and they were given opportunity to explain the circumstances appearing in the management's evidence against them and also putforth their own defence. The delinquents had examined 2 witnesses in defence and then closed their evidence. It is pertinent to note that both these delinquents have subscribed their signatures to the statements of all the witnesses examined in the course of enquiry. After the evidence was over, the enquiry officer Shri M. K. Kumar prepared and submitted the enquiry report which is to be found at page 6 of Annexure 'A'. I find that it is a well reasoned document and the evidence of both the sides has been closely marshalled and the enquiry officer has come to the conclusion that the charges levelled against both the delinquents are clearly proved.

8. It is true that the record of the domestic enquiry was prepared in English. At the very beginning, the enquiry officer had made it clear to the delinquents that the proceedings will be recorded in English and that it was open to them to take the assistance of any co-worker to explain the proceedings in Hindi and also assist the delinquents in the enquiry. Both the delinquents had stated that that procedure was acceptable to them and that the proceedings may be explained to them in Hindi and that they do not need the assistance of any other worker. Thus, the proceeding in english was written down by the enquiry officer and it has been duly signed by both the delinquents. So, although the recording was done in English, it is clearly established that the enquiry itself was conducted in Hindi and it is not urged on behalf of the delinquents that they were not able to follow the proceedings or that they have suffered any prejudice by reason of the procedure adopted by the Enquiry Officer. It would also appear that although 2 separate charge-sheets were served on the delinquents, a joint enquiry was held against them for the simple reason that the enquiry arose out of a common incident in which according to the management, both the delinquents had acted jointly against a common victim.

9. In his deposition before me, the delinquent Rajaram has stated that he was not given an opportunity to cross-examine the management's witnesses. This is falsified by the record. He has further stated that he desired to examine 4 witnesses in defence but, was allowed to examine only 2 witnesses and an opportunity was denied to him to examine the remaining 2 witnesses. This is also falsified from the record of the domestic enquiry. This is clearly an afterthought because, no such suggestion was made to the enquiry officer Shri M. K. Kumar who was examined prior in point of time on behalf of the management. It may be noted that the second delinquent Anandi Ram has not in his deposition, made any grievance about the procedure adopted by the Enquiry Officer in the course of enquiry. Shri Dhabe appearing for Party No. 2, was not able to point out any lacuna or infirmities in the procedure adopted by the Enquiry Officer, M. K Kumar, in holding this domestic enquiry.

10. It is, however, pointed out by Shri Dhabe that the inferences drawn by the Enquiry Officer must be regarded as baseless or perverse and they are not borne out by evidence which had come on record in the course of enquiry. As I have pointed out, this Tribunal cannot re-appreciate the evidence which was recorded in the course of domestic enquiry and come to its own conclusion. In my opinion, the inferences drawn by the enquiry officer are fully borne out by the evidence. The management had examined the victim, Indra Narain Pande who had spoken about the assault made on him at about 2.30 p.m. on 26-3-69 near the Multipurpose Institute. He has stated as to how he was returning from the railway station after ascertaining the wagon position, how he was accosted by both these delinquents and as to how he was beaten up by both the delinquents. He has stated that he was rescued by 3 passers-by viz. Prabhudas, Nagesh and Raoot who helped him to reach the General Manager's bungalow and from there he was taken to the Municipal Hospital for

treatment for the leg injuries. He had lodged a complaint with the Manager of the colliery and also in the police station. As regards the motive he has stated that the assault was a sequal to the family quarrels between them. The evidence given by him is substantially corroborated by 3 witnesses, Prabhudas, Raoot, and Nagesh Pochem. As I have pointed out, all these witnesses are duly cross-examined.

11. The enquiry officer has also taken into consideration the defence putforth by the delinquents. According to Rajaram, on that day he was working in the first shift and that he had worked upto 3 p.m. and so, there was no possibility of his having assaulted Shri Pande at about 2.30 p.m. In support of his contention Rajaram examined one witness Gopalsingh and the value of his evidence has been duly discussed by the Enquiry Officer. The management had examined Ramayya, Rajaram's mate and his statement disclosed that Rajaram was not to be found at the place of duty from 2 p.m. to 3 p.m. That evidence has been accepted by the enquiry officer. In support of his contention, Rajaram had also placed reliance on the attedance register in whicth the time of his leaving the work was first recorded as '3 p.m.' and then it was corrected to '2 p.m.'. In this connection, the management has examined the Register-keeper who has explained the correction. That explanation has been accepted by the enquiry officer for good reason, and it is idle to suggest that the management had attempted to create false evidence so as to implicate Rajaram. On the point of actual assault, the delinquents examined only one witness Ramsajiwan Dal Singh and the enquiry officer has weighed the value of his evidence and has disbelieved that evidence for apparently good reasons. In my opinion, therefore, it is not correct to say that the inferences drawn by the Enquiry Officer are unreasonable, absurd or perverse and they are not borne out by the evidence recorded at the enquiry. It would appear that the view taken by the Enquiry Officer was a possible view and such a view could be taken by any reasonable and prudent man.

12. As regards Anandi Ram, it may be noted that he has admitted about some incident having taken place between him and Shri Pande at about 2.30 p.m. on that day near the Welfare Centre. Before the Enquiry Officer, he had stated that Shri Pande was the aggressor and had abused him and manhandled him and he had managed to run away from his clutches. It was his case that while chasing him Shri Pande fell down in the gutter and the injuries to his leg are attributed to such a fall. This defence put forward by Anandi Ram has also been considered by the Enquiry Officer for what it is worth. The Enquiry Officer was not inclined to accept that theory put forward by Anandi Ram. In the evidence before me, Anandi Ram has tried to exaggerate the incident by saying that Shri Pande had caught hold of his shirt-collar and had snatched away Rs 50|- from his pocket. He has admitted that although he was the victim of theft and assault, he had not reported the matter to the police. According to him, he was rescued by one Kanhaiyalal Maharaj who is examined as a witness before me. There are material discrepancies in the evidence of Anandi Ram and Kanhaiyalal Mahraj. There is no manner or doubt that Kanhaiyalal Mahraj is a got-up witness because, he was not examined in the course of domestic enquiry. Kanhaiyalal Mahraj does not speak a word about the physical assault made by Pande on Anandi nor is there even a whisper about Indra Narain Pande having snatched away Rs. 50|- from Anandi. On the other hand, Kanhaiyalal Maharaj would have us believe that these 2 persons had only an oral altercation between them and that they had not come to grips. It would appear that following the report made by Indra Narain Pande in the police station, both the delinquents were called there and detained for some time for interrogation and then released on bail. So, the story of assault on Indra Narain Pande cannot be regarded as a figment of imagination.

13. Now, the charges against Rajaram are under the following standing orders:

S.O. No. 21(10)—Any Act on the part of the workman which is likely to cause breach in the industrial peace, on or about the premises.

S.O. No. 21(18) — Indiscipline.

S.O. No. 21(26) — Leaving work without permission.

The charges against Anandi Ram are under the following standing orders:

S.O. No. 21(10)—Any act on the part of the workman which is likely to cause breach in the industrial peace, on or about the premises.

S.O. No. 21(18) — Indiscipline.

The Enquiry Officer had found that the charges against each delinquent are fully established.

14. It would appear that the substantial charge against each delinquent is under Standing Order No. 21(10). Now, reference to the standing orders is from the old standing orders. It is not disputed that now, the new standing orders are in force and there is some variation in the two sets of standing orders. In this case, both these delinquents were dismissed from service with effect from 17-5-69. It was pointed out by Shri Dhabe that the new standing orders have come into force from 16.5.69 and that the dismissal order should have been passed pursuant to the new standing orders. It is pointed out that in the new standing orders, there is no such clause as No. 21(10) and the corresponding clause is 13(17) about threatening, abusing or assaulting any person in the employment|management of the company. It was submitted by Shri Dhabe that the management was in error in passing an order of dismissal in the light of the old standing orders when the new standing orders had come into force. I find that there is not much force in this contention. The management has filed on record booklets containing old standing orders as well as new standing orders. It would appear that the certifying officer had under Section 5(3) of the Industrial Employment (Standing Orders) Act, 1946 forwarded copies of certified standing orders to the employer and other parties on 16-5-1969. According to Section 7 of the said Act, the new standing order therefore, came into operation on the expiry of 30 days from 16-5-69. It would therefore appear that the new standing orders had not come into operation when the domestic enquiry was held and the dismissal order was passed. There is therefore, not much force in the aforsesaid contention of Shri Dhabe.

15. It was however, submitted by Shri Dhabe that assuming everything in favour of the management it cannot be held that these 2 workmen had committed any misconduct within the mischief of clause 21(10) of the Standing Orders. As I have pointed out that standing order refers to an act on the part of the workman which is likely to cause breach in the industrial peace on or about the premises: It was urged by Shri Dhabe that the enquiry officer has not recorded a clear-cut finding whether the incident of assault had taken place on the premises or about the premises. The enquiry officer has observed that the spot at which the incident took place is such that it is difficult to decide whether it is exactly on the premises or about the premises. But, in view of the fact that the place is very near to the new pit, he had no doubt that the incident had taken place on the premises. It is further observed that as the standing orders provide for action irrespective of the incident taking place on the premises or about the premises, the E.O. has left that point as it is.

16. In this case, the evidence on record goes to reveal that the incident had taken place near the Multipurpose Institute or the Welfare Centre. The Enquiry Officer, Shri Kumar, has stated in his evidence that that Institute does not fall in the area of the establishment of the Mine but, it would fall within the meaning of "about the premises". In the cross-examination, he has stated that by the expression "about the premises" he understands that it certainly covers some distance beyond the premises. He has candidly admitted that he has not applied his mind as to the exact distance in terms of feet between the site of the assault and the colliery premises. Shri Anandiram has stated in the concluding portion of his deposition that the Multipurpose Institute is situated by the side of Pits Nos. 3 and 4 and that that Institute is located inside the compound of the colliery. Shri G. M. Kohde, the Working President of the Maharashtra Pradesh Koyala Khadan Kamgar Sangh, has also stated in his deposition that the Multipurpose Institute is about 3-4 furlongs from Pit No. 4. He further says that that Institute is inside the compound of the colliery which has an extensive area covering even some area of the town. It would therefore, appear from the evidence that the incident had taken place if not on the premises at least, about the premises within the mischief of sub-clause (10) of Clause 21 of the Standing Orders.

17. It was next urged by Shri Dhabe that assuming that these 2 workmen had manhandled or even assaulted Indranarain Pande as alleged by the management, that act cannot be regarded as one which is likely to cause breach in the industrial peace within the meaning of clause 21(10) of the Standing Orders. In this connection, it is pointed out that the Enquiry Officer has not applied his mind to this aspect of the matter and he has not recorded any positive finding that the act was such that it was likely to cause breach in the industrial peace. It was submitted by Shri Dhabe that at worst, this was a case of a private quarrel between two sets of workmen near the colliery premises and that clause 21(10) of the Standing Orders does not contemplate such an act as constituting a misconduct. It is pointed out that this was not a case of 2 groups of colliery workers clashing together leading to a riot and giving rise to an issue of law and order. I have given my careful consideration to this argument advanced by Shri Dhabe but, I for one, cannot accept his submission. We have to visualise the facts and circumstances of the case in order to come to the conclusion whether the assault was an act which was likely to cause breach in the industrial peace. As I have pointed out, the incident had taken place very close to the colliery premises. The assault was made by 2 mine-workers on another mine-worker who was then on duty, returning from the railway station to the Colliery. The incident had potentiality of causing breach in the industrial peace because the victim would have attempted to avenge himself by collecting his friends, relatives and well-wishers and that would have certainly led to a breach in the industrial peace in the colliery premises. In my opinion, therefore, the conclusion drawn by the Enquiry Officer that both these workmen have committed a misconduct within the meaning of Standing Order 21(10) cannot be regarded as unreasonable or perverse. Clause 21(18) of the Standing Orders relates to an act of indiscipline and it is co-related with the act under clause 21(10) and the corollary thereof. So, the finding that both the workmen had also committed a misconduct under clause 21(18) cannot also be regarded as unreasonable. It has further been held that Rajaram has also committed misconduct within the meaning of clause 21(26) in that he had left the work without permission. As I have pointed out, this conclusion of the Enquiry Officer is also borne out by the evidence. In my opinion, therefore it cannot be said that the conclusions drawn by the enquiry officer are in any way unreasonable or perverse so as to call for any interference at the hands of this Tribunal.

18. It was submitted by Shri Dhabe that both these workmen are active members of the Maharashtra Pradesh Koyala Khadan Kamgar Sangh and their trade union activities were not tolerated by the management and they have been punished for their trade union activities. It is said that this is undoubtedly a case of unfair labour practice and victimisation on the part of the management. It is pertinent to note that such a complaint was not made by either workman before the Enquiry Officer, Shri Kumar. It must be regarded as an after-thought.

19. Rajaram has stated in his deposition that another reason why he is dismissed is that he had given an offence to the management by giving evidence against the management in a case of riot between 2 groups of colliery workers in the criminal court at Rajura. He has further stated that after he had given evidence, he was called by the General Manager Shri Zha who gave him point blank threat that since he has given evidence against the management, he would be removed from service. He has further stated that Shri Zha was also irked by his trade union activities and had remarked to him, "you are moving about posing as a union leader; I would see you." However, in the cross-examination he has admitted that that criminal case still pending in the criminal court at Rajura is not against the management but, one of the accused Shri Mishra is the brother-in-law of the General Manager Shri Zha and the Labour in-charge of the colliery. Rajaram has admitted that he has not disclosed to the Deputy Commissioner of Labour or the Conciliation Officer about the threats given to him by Shri Zha after he had given evidence in that riot case at Rajura. He says he has disclosed it before the enquiry officer Shri Kumar but, there is no such suggestion made to Shri Kumar in the cross-examination. Anandi has also spoken about the threat given by Shri Zha because he was a member of the union. In the cross examination, he gives an evasive reply by saying that he has no recollection whether he had disclosed to the conciliation officer the threat given by Shri Zha. It has come in the evidence that both these workers are members of the Maharashtra Pradesh Koyala Khadan Kamgar Sangh. But, there is nothing to show that they are either office-bearer or active workers of the union so as to be an eye-sore to the management. It has also to be noted that even the office bearers and active workers of a union cannot have a *carte blanche* to commit any misconduct and get away on the plea of victimisation *vide* **Bengal Bhatdee Coal Co. V. Ram Prabesh Singh** (1963-I LLJ 291). So, there is not much substance in the aforesaid plea put forward by the party no. 2.

20. Shri Dhabe appearing for Party no. 2 also invited my attention to clause 25 of the standing orders which says that in awarding punishment under the standing orders, the manager, shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. It was submitted by Shri Dhabe that in the report submitted by the Enquiry Officer, Shri M. K. Kumar, there is not a word about having taken into account the aforesaid factors. In his cross-examination, Shri Kumar has admitted that before proposing the punishment of dismissal he had not taken into consideration the length of service of these 2 workmen and he had not also examined their previous record of service. His recommendations were based on the facts and findings reached at the domestic enquiry.

21. Now, it has to be noted that under clause 25 *ibid* it is the manager who has to take into account the aforesaid factors and not the enquiry officer. In the instant case, it would appear from page 5 of Annexure 'A' to the written statement that the Manager Ballarpur Colliery had sent a confidential report to the head office at Nagpur as regards the departmental enquiry held against Rajaram. It is stated in that report that considering the evidence on record, his (Rajaram's) past record and taking into consideraiton all the circumstances and the gravity of the misconduct, he agreed with and entirely accepted the recommendations of the enquiry officer. The confidential report as regards Anandiram is to be found at page 3 of Annexure 'A' and in that report, it is also stated by the manager that considering the evidence on record and taking into consideration all the circumstances and the gravity of the misconduct he agreed with and entirely accepted the recommendation of the enquiry officer. It would therefore, appear that there is a substantial compliance with the requirements of clause 25 of the standing orders. It was pointed out by Shri Dhabe that the order passed by the manager must be a speaking order and it must ordinarily show whether the manager has taken into account the gravity of the misconduct, the previous record and other extenuating and aggrevating circumstances that may exist. In this connection Shri Dhabe invited my attention to the decision of our High Court in Sp. C.A. No. 59/62—**Empress Mills** VS. NILKANATH decided on 22-10-62. There can be no dispute about the ratio of that case, but, as I have pointed out, that ruling is not applicable to the facts of this case.

22. Before parting with the case, I may refer to the plea taken by the party No. 1 by way of amendment to the written statement. It would appear that after the reference and after the filing of the written statement, the mine in which these workmen were working had been innundated and closed from about 24-8-70. Consequently, the working of pits nos. 1 and 2 had come to a standstill. After the closure of these 2 pits, the employer and the union arrived at a settlement on 8-11-70. It is contended on behalf of the party No. 1 that in view of that agreement, the claims of all the workers including these two workmen have been settled and the reference has therefore, become infructuous. Now a copy of the Memo of Settlement is filed at Exh. E-22 and reliance is placed on clause 7 of the settlement which runs as under:

> "This Settlement is the complete and final settlement of all the demands and claims of the workmen *arising from the closure of Ballarpur Colliery Nos. 1 & 2 pits.* No dispute shall lie or shall be raised by or on behalf of the workmen or the employer in this regard." (*Underlining Supplied*)

Now, it has to be noted that this settlement covered the demands and claims of the workmen arising from the

closure of the said pits. The dispute referred to this Tribunal in these reference, does not arise from the closure of the said pits. It arises because of the punishment meted out by the management to these 2 workmen for the acts of misconduct committed by them. So, this contention of the Party No. 1 is entirely misconceived and must be rejected outright.

23. For the above mentioned reasons, I hold and find that the management of Ballarpur Colliery of M/s Ballarpur Collieries Company Limited, was quite justified in dismissing Sarvashree Rajaram Ram Narayan Shukla, Ex-Sand Slusher Khalasi and Anandi Ram Narayan Shukla Haulage Khalasi with effect from the 17th May, 1969. These 2 workmen are not therefore, entitled to any relief.

I make an award accordingly.

Nagpur,
D/2nd October, 1972.

W. K. ALMELKAR, Presiding Officer.

New Delhi, the 10th November, 1972

S.O. 3859.—In pursnace of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Nagpur, in the Industrial dispute between the employers in relation to the management of Ballarpur Colliery of Messrs Ballarpur Colliery Company Limited, Nagpur (Maharashtra) and Shri Mohanlal Hubblal which was received by the Central Government on the 30th October, 1972.

AWARD

[No. 3/1/70-LRII.]

KARNAIL SINGH, Under Secy.

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NAGPUR

REFERENCE (CGT) NO. 3 of 1970

Present: Shri W. K. Almelkar, B.A.,LL.B., Presiding Officer.

Parties:

The Management of Ballarpur Colliery of Messrs Ballarpur Collieries Company Limited, Nagpur (Maharashtra) *Employer* First Party

And

Shri Mohanlal Hubblal. *Employee* Second Party.

Appearance: For Employer: Shri Gadkari,
For Employee: Shri S. W. Dhabe, Advocate.

State — Maharashtra Industry Colliery

Nagpur Dated the ——— October 1972.

AWARD

This is a reference made by the Government of India, Department of Labour And Employment, under Section 10(1) (d) of the Industrial Disputes Act, 1947 for the adjudication of an industrial dispute between the Employers in relation to the Management of Ballarpur Colliery of Messrs Ballarpur Collieries Company Limited, Nagpur and Mohanlal Hubblal in respect of the following matter:

"Whether the action of the management of Ballarpur Colliery of Messrs Ballarpur Collieries Company Nagpur in dismissing Shri Mohanlal Hubblal, badli workman with effect from the 21st May, 1969 was justified? If not, to what relief is the workman entitled?"

2. A statement of claim is filed the Maharashtra Pradesh Rashtriya Koyala Khadan Kamgar Sangh, Nagpur and the aggrieved workman Mohanlal Hubblal. The said union is duly registered and it has branches and membership in all the collieries including the Ballarpur Colliery. Mohanlal Hubblal is a member of that union. He was working as a Haulage Khalasi and he is permanent employee of the Ballarpur Colliery. He was dismissed from service by the order dated 21-5-69. He is dismissed for the alleged misconduct under Standing Order No. 21(10). It is alleged that the domestic enquiry held against Mohanlal was far from being fair and proper. He was not given adequate opportunity to meet the charges and put forth his defence. He has been removed from service because of his trade union activities. According to the management, Mohanlal had assaulted Mahesh Sukhi Chowkidar and Lakhan Jagannath while on duty on 13-4-69. But, on the date of the incident, Mohanlal was at his residence and could not have reached the spot as he was on sick leave from 7.4.69 to 9.4.69 with a severe burn injury to his leg. The management is following a very discreminatory treatment towards the employees. They have kept about 2000 to 3000 workers in a separate camp and they are not allowed to mix with the local workers. The living conditions in the camp are deplorable. Mohanlal had taken active interest in ventiliating the grievances of the camp employees and that irked the management. The removal/dismissal of Mohanlal amounts to unfair labour practice. The order deserves to be set aside and Mohanlal reinstated in service and also paid back wages.

3. The party no.1, namely, the Management, filed written statement repudiating the claim of Mohanlal. It is alleged that the domestic enquiry against Mohanlal was held by Shri M. K. Kumar, an officer in the Personnel Department at the head office. He had given every opportunity to the delinquent to cross examine the management's witnesses and lead his own defence. The delinquent had participated in the enquiry which was held on 6.5.59. He however, declined to examine any witness in his defence. On the basis of the evidence adduced before him, the enquiry officer came to the conclusion that the worker had committed misconduct under Standing Order 21(10) and he recommended that the worker should be dismissed. After obtaining sanction from the head office, the manager dismissed Mohanlal by the order dated 21-5-59. The enquiry was held in consonance with the principles of natural justice and there is no reason why this Tribunal should interfere with the findings of the Enquiry Officer. The management is fully justified in dismissing the said worker. It is further contended that Mohanlal was a badli worker working in the mine known as Ballarpur Collieries 1 & 2 pits. This mine had been inundated and closed from or about 24.8.70 and there is no working in this mine since then. After the closure, the workers of this mine and the employer have arrived at a settlement dated 8-11-70 and all the claims of the workers of this mine stand settled. The claim made in the reference is, therefore, liable to be rejected in limine.

4. The facts of this case lie within a narrow compass. Mohanlal Hubblal has been dismissed from service by the order dated 21.5.69 for having committed a misconduct under cl. 21(10) of the Standing orders. It is not disputed in this case that a domestic enquiry was held by Shri M. K. Kumar, Officer in the Personnal Dept. at the Head Office. The management has filed on record copies of all the papers and proceedings of the domestic enquiry. The originals were brought and the copies are duly proved.

5. A copy of the charge-sheet given to Mohanlal is filed at Ex.A-7. According to the management, Mohanlal had at about 5 p.m. on 13.4.69 waylaid and assaulted Mahesh Sukhi and Lakhan Jagannath, colliery workers while on duty. The said act amounted to misconduct under standing order 21(10) which reads as under:

"Any act on the part of the workman which is likely to cause breach in the industrial peace, on or about the precises."

The reply to the charge-sheet given by the delinquent Mohanlal is filed at Ex. A-8. He had repudiated the charge of assault and characterised it as false and baseless. It is further stated by him that by reason of the burn injury sustained by him on 7.4.69 he was not even able to walk a few steps, much less reach the spot of the assault and beat up these 2 workmen.

6. Shri M. K. Kumar held the domestic enquiry on 6-5-69. The evidence given by Shri Kumar read with the enquiry papers would go to reveal that the enquiry held by him was quite fair and proper and it was conducted in consonance

with the principles of natural justice. Mohanlal had admittedly participated in the enquiry. He had exercised his right to cross examine the management's witnesses. He was also given an opportunity to lead defence evidence, but, he declined to examine any witness. After the evidence was closed, the delinquent was examined so that he may get an opportunity to explain the circumstances, which had appeared in the evidence of the witnesses examined by the management. It would therefore, appear that the Enquiry Officer had not committed any serious lapses in conducting the enquiry which is free from any infirmities. It is true that the recording of the enquiry was done in english but it has to be noted that the enquiry itself was conducted in Hindi. In the very beginning, it was explained to the delinquent that the proceedings will be recorded in English and that it was open to the delinquent to take the assistance of any co-worker for explaining the proceedings in Hindi and also for assisting him in his defence. Mohanlal categorically stated that the procedure was acceptable to him and that he needed no assistance from the co-worker and the enquiry officer may himself explain the recording in Hindi to him. In his deposition before this Tribunal, Mohanlal has not made any grievance about the procedure adopted at the enquiry. In the statement of claim, it is vaguely stated that Mohanlal was not given opportunity to defend his case but, that appears to be devoid of substance for the reasons already stated.

7. It is, however, urged by Shri Dhabe, the learned Advocate for the Party No. 2, that the enquiry conducted by Shri Kumar is vitiated because, under the standing orders he was not competent to hold the enquiry. It is pointed out by Shri Dhabe that under the standing orders, the powers to hold the enquiry vested in the Manager and the Manger had no powers to delegate the powers to any other officer subordinate to him or equivalent in rank to him. In this connection Shri Dhabe invited my attention to Standing order nos. 20(5), 23, 24, and 25, 31(2) and 33. With reference to these provisions, it was argued by Shri Dhabe, that in all these clauses of the standing orders, it is essentially the Manager who has been held responsible and there is no provision made in the standing orders so as to enable the manager to delegate his authority to any other officer in the matter of conducting the domestic enquiry against the workman. I have given my careful consideration to this submission made by Shri Dhabe but, I for one, find myself unable to uphold his contention. It was rightly pointed out by Shri Gadkari, appearing for Party No. 1, that there is no specific provision made in the standing orders that the domestic enquiry shall be conducted by the manager alone and cannot be entrusted to any other officer. From the standing orders, we cannot spell out any prohibition in the matter of entrusting the enquiry by the manager to any other officer. It has been held by the Supreme Court in ANANDA BAZAR PATRIKA (PVT) LTD. VS. THEIR EMPLOYEES (1963 II LLJ 429) that it is open to the employer to entrust an enquiry against a workman for his misconduct in the discharge of his duties to an outsider. There is no rule that the enquiry must be held in every case by an officer of the company, and it cannot be said that a domestic enquiry is illegal or void merely because the person who held the enquiry was an outsider, and not an officer of the employer company. There is, therefore not much force in the aforesaid contention of Shri Dhabe. It is also pertinent to note that no such objection regarding the competency of the enquiry officer was taken by the delinquent in the course of enquiry. In the statement of claim also, such a plea has not been taken and so, the plea appears to be clearly misconceived and an after-thought.

8. Now, as I have pointed out, the order of dismissal was passed by way of punishment as a result of the domestic enquiry held against Mohanlal. In such cases, the powers of the Tribunal are limited. The Tribunal to which such a dispute is referred for adjudication cannot act as a court of appeal and ordinarily it cannot substitute its own judgment for that of the employer. The tribunal is justified in setting aside the order of dismissal made by the employer only in any of the three cases, namely, (i) when the order made is *mala fide* or there has been victimisation or unfair labour practice, or (ii) when the domestic enquiry has not been fair and proper, or (iii) when the finding against the workman is baseless or perverse. In this connection, I may refer to the oft cited case of the Supreme Court reported in 1958 *S.C.R.* 667—*INDIAN IRON & STEEL CO. LTD. V.* THEIR WORKMEN.

9. It was submitted by Shri Dhabe that in this case, the findings reached by the Enquiry Officer, Shri Kumar, must be characterised as unreasonable, baseless and perverse. I have scrutinised the enquiry papers as well as the report submitted by the Enquiry Officer. The enquiry officer's report is a well reasoned document, and the evidence has been carefully marshalled and the defence put forth by the delinquent has also been examined for what it is worth. It cannot be said that the findings reached by the Enquiry Officer are such that no reasonable and prudent man could reach them. Now, this was a simple case of an assault made in the afternoon of 13-4-69 by Mohanlal, on two colliery workmen — Mahesh Sukhi and Lakhan Jagannath. In the enquiry, statements of both these complaints were recorded and their evidence has been corroborated by Badli Superviser Imadul Husain and Munnulal Chowkidar. Munnulal was an eye witness and he had seen Mohanlal Hubblal beating Lakhan with hand and Mahesh Sukhi with a hockey stick. Indrasen had arrived on the scene soon afterwards. He is not an eye witness to the incident but he had noticed injuries on the person of Mahesh and Jagannath and Hubblal was also there. As I have pointed out, Mohanlal Hubblal had cross-examined all these witnesses. The Enquiry Officer was pleased to accept the evidence of all the 4 witnesses including the 2 complainants and there is no reason to disagree with the assessment of the evidence made by the Enquiry Officer.

10. Now, the defence put forth by Mohanlal Hubblal was that he could not have been present to assault these 2 workmen because he was on sick leave from 7-4-69 to 19-4-69 and by reason of the burn injury suffered by him to his leg, it was impossible for him even to walk a few steps much less to go out to assault these 2 workmen. It has been established that in fact Mohanlal was on sick leave during that period including the date of the assault. It had also been proved that he had sustained burn injury to his leg and was under the treatment of a doctor for which medical certificate has been issued. It is argued by Shri Dhabe that the enquiry officer has overlooked all this evidence and the conclusion reached by him that Mohanlal had committed assault on that day must be regarded as absolutely perverse. This again is a matter of appreciation of evidence. It may be noted that to clear up the doubt the enquiry officer had examined the medical officer who had treated Mohanlal. The Medical Officer had stated that the burn injury sustained by Mohanlal was a superficial burn not restricting much of his movements and on 13-4-69 there was no deterioration in his condition as compared to 10-4-69 when he came with the burn injury. He has further stated that Mohanlal was walking into the hospital and walking out himself without any help. The Enquiry Officer has been pleased to accept the evidence of the Medical Officer and it is not the function of this Tribunal to see whether the Medical Officer should have been believed or disbelieved. Before this Tribunal also, Mohanlal has deposed that he was not in a position to walk by reason of that burn injury to his leg. His witness Kisan is his next door neighbour and he has also spoken about Mohanlal's leg injury due to the burn. The burn injury was caused when Mohanlal's leg came into contact with the steam emanating from the boiler. Kisan removed Mohanlal to the hospital for treatment of the burn injury. He says that for about a fortnight or so, every day he was taking Mohanlal to the hospital on bicycle. It is rather curious to note that in his deposition Mohanlal does not speak a word about Kisan having rendered all this assistance to him. The evidence given by Kisan on the point appears to be of a make-believe character and must be rejected outright. I may also point out that Kisan was not called as witness by Mohanlal in the course of the enquiry.

11. It was faintly urged by Shri Dhabe that there was no previous enmity between Mohanlal and these 2 workmen and the management has not been able to establish any motive for the assault. It is true that both the complaints also expressed their inability to attribute any motive behind the assault to Mohanlal. But, simply because no motive is discernible, the positive evidence regarding the assault cannot be thrown overboard. The motive is something which has a subjective element and it can only be explained by the miscreant. So, this argument also cannot hold water. In my opinion, therefore, the findings rendered by the Enquiry Officer cannot be regarded as baseless or perverse.

12. It was, however, argued by Shri Dhabe that the order of dismissal must be regarded as *mala fide* and it is clearly a case of unfair labour practice and victimisation. It has come in the evidence that Mohanlal is a member of the Maharashtra Pradesh Koyala Khadan Kamgar Sangh of which Shri G. M. Khode is the Working President. It is

not, however, shown that Mohanlal is an office-bearer or an active member of the Union so as to become an eye sore to the management. It would also appear from the evidence of Shri Kumar that in the enquiry, Mohanlal had not taken the plea that the management was proceeding against him for his trade union activities. There is apparently no reason why the management should have singled out for action Mohanlal from amongst the members of this union. Even if it is assumed for the sake of argument that Mohanlal was taking an active part in the trade union activities, it cannot be inferred that he has been punished for that reason. The office bearers and active workers of an union cannot have a *carte blanche* to commit any misconduct and get away on the plea of victimisation *vide Bengal Bhatdee Coal Co. V. Ram Prabesh Singh* (1963 *I LLJ* 291). So, the plea raised by the party no. 2 is also clearly misconceived and misdirected and cannot bear scrutiny.

13. In this case, the order of dismissal was passed on 21-5-69. It was pointed out by Shri Dhabe that assuming everything in favour of the management, it cannot be said that the act committed by Mohanlal constitutes a misconduct within the meaning of Sec. 21(10) of the Old Standing Orders. As I have pointed out, it refers to any act on the part of the workman which is likely to cause breach of the industrial peace on or about the premises. It was submitted by Shri Dhabe that there is no clear cut finding recorded by the enquiry officer whether the incident had taken place "on or about the premises." Now, it has come on record that the incident had occurred rear *satnal* which is between the *basti* and the new pits. Shri Kumar has stated in his deposition that *Satnal* is beyond the gate of the old pit and it is approximately 3 furlongs from the main gate. New pit is about a furlong from *Satnal* and the *basti* commences from the *Satnal*. It is, therefore, clear that the incident had taken place if not on the premises; certainly, about the premises. It is further submitted by Shri Dhabe that this was a case of individal assault for reasons not connected with the working of the colliery and it is not shown that the assault was likely to cause breach in the industrial peace. It is submitted that there is nothing to show that the assault could have led to a riot or give rise to law and order situation. I do not find much force in this argument. The assault was made quite close to the colliery premises and out of the two victims, Mahesh Sukhi was on duty although Lakhan was on rest on that day. Mahesh Sukhi being chowkidar it was part of his duty to keep moving to watch if any coal or company's property is stolen or moved elsewhere. The act committed by Mohanlal Hubblal had a potentiality of causing breach in the industrial peace because these 2 victims could have collected their friends, relatives and well wishers and mounted a counter attack which could have seriously jeopadised the peace and tranyuility in the colliery area. So, there is not much force in this contention also.

14. Shri Dhabe then invited my attention to clause 25 of the standing orders which provides that in awarding punishment under the standing orders, the manager shall take into account the gravity of the misconduct, previous record if any, of the workman and any other extenuating or aggravating circumstances that may exist. It was pointed out by Shri Dhabe that the order must be a speaking order and in this connection he pressed into service the decision of our High Court — in Sp. C.A. No. 59/62 EMPRESS MILLS V. NILKANTH decided on 22-10-62. There cannot be any dispute about the ratio of that decision, but that ruling is not applicable to the facts of this case.

It is submitted by Shri Dhabe that in the report submitted by the enquiry officer, there is nothing to show that he had taken into account all these facts enumerated in the Standing Order No. 25. In his deposition before the Tribunal also, Shri Kumar has admitted that he had not taken into consideration Mohanlal's previous record of service and so also the length of service rendered by him. What he had taken into account was the gravity of the misconduct. However, it has to be noted that under standing order no. 25, it is the manager who has to take into account all these factors. In this case, it would appear from Annexure A-3 which is a confidential report submitted by the Manager of the Ballarpur Colliery to the head office that he had taken into consideration the evidence on record and all the circumstances and the gravity of the misconduct before passing the order of dismissal subject to the approval of the head office. It would, therefore, appear that in this case, there is a substantial compliance with the requirements of the Standing Order No. 25.

15. In this case, the management has taken the plea that the claim made in this reference is not tenable because of subsequent events. It is pointed out that Mohanlal Hubblal was a badli worker. After the reference and after the filling of the written statement, the mine in which he was working had been inundated and closed from 24-8-70. Consequently, there is no working in the said mine. It is pointed out that after the closure, the employer and workers of the mine had arrived at a settlement on 8-11-70 and all the claims of the workers of this mine have been settled. Therefore, it is pointed out that this industrial dispute does not survive for adjudication. Now, we have at Ex. E-2 a copy of the Memo of settlement and on behalf of the management reliance is placed on clause 7 which reads as under :

> "This settlement is the complete and final settlement of all the demands and claims of the workmen *arisIng from the closure of Ballarpur Colliery Nos.* 1 *and* 2 *pits.* No dispute shall lie or shall be raised by or on behalf of the workmen or the employer in this regard."
>
> **(underlining supplied)**

The language of this clause is quite express and it refers to the settlement of the demands and claims arising out of the closure of the colliery. It has no relation to the punishment awarded by the management for the acts of misconduct committed by the workman. In this connection I may also refer to the evidence given by Shri Khode, Working President of the Union. He says that in the course of the negotiations and discussion, there was no reference made to the case of Mohanlal Hubblal or any other workers pending in the courts or tribunals. So, this plea is misconceived and cannot hold water.

16. It would be clear from the above discussion that the action of the management in dismissing Mohanlal Hubblal was quite justified and he is not entitled to any relief.

I make an award accordingly.

NAGPUR W. K. ALMELKAR, Presiding Officer.

Dated, 2nd October, 1972.

New Delhi, the 10th November, 1972

S.O. 3860.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal No. 1, Dhanbad, in the industrial dispute between the employers in relation to the management of Bhowra (North) Colliery of Messrs Oriental Coal Company Limited, Post Office Bhowra, District Dhanbad and their workmen, which was received by the Central Government on the 1st November, 1972.

(AWARD)

[No. L-2012/79/71-LRII.]

KARNAIL SINGH, Under Secy.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE NO. 14 OF 1971

PARTIES :

Employers in relation to the management of Bhowra Colliery (North) of Messrs Oriental Coal Company Limited, Post Office Bhowra, District Dhanbad.

AND

Their Workmen.

PRESENT :

Shri A. C. Sen, Presiding Officer

Appearances :

For the old employers. Shri P. K. Bose, Advocate with Shri B. M. Lall, Personnel Officer.

For Bharat Coking Coal Co. Ltd. (Added as party vide order No. 12 dated 24th March, 1972).	Shri S. S. Mukherjee, Advocate with Shri J. N. P. Sahi, Labour and Law Adviser.
For the Workmen :	Shri S. Das Gupta, Advocate.
STATE : Bihar	INDUSTRY : Coal

Dhanbad, dated the 27th October, 1972.

AWARD

The present reference arises out of Order No. L/2012/79/71-LRII dated New Delhi, the 17th June, 1971 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :

"Whether the action of the mangement of Bhowra (North) Colliery of Messrs Oriental Coal Company Limited, Post Office Bhowra, District Dhanbad, in refusing to place Shri Gaya Singh in the Grade of Mechanical Fitter Category VI as per recommendations of the Coal Wage Board is justified? If not, to what relief is the concerned workman entitled and since when?"

2. The case for the workmen is as follows. The concerned workman, Gaya Singh, has been working at Bhowra Colliery (North) since 1955. He was directed to work as a mechanical Fitter, named Shew Nath. He was not directed to work as a March, 1963. The said Sarafuddin left his job after sometime and the concerned workman was directed to work as a mechanical fitter in the vacancy of Sarafuddin. Gaya Singh was given independent charge of all the machinery under him. He is a very experienced fitter and is capable of undertaking skilled repair work of coal cutting machines, haulage engines, pumps, mechanical ventilators and other machinery and plants and of operating the said machines and plants. He is capable of accurate filling and fitting of bearings, keys etc. He possesses good knowledge of assembling and lubrication and he knows how to run efficiently the machines he is called upon to repair. Though he is getting wages of category IV the management has kept him in category II. He requested the management for proper categorisation several times both orally as well as in writing by his letters dated 3rd November, 1970, 30th January, 1971 and 13th March, 1971 but no action was taken on his representation for proper categorisation.

3. An industrial dispute raised by the union regarding the proper categorisation of Gaya Singh, and during the pendency of the dispute before the Conciliation Officer, the management filed an application under section 33(1)(a) of the Industrial Dispute Act, 1947, seeking permission to reduce the wages of Gaya Singh on the plea that he was paid extra wages due to clerical error. The said application was rejected by the Conciliation Officer primarily on the ground that it was not a *bonafide* application having been filed with a view to forestall the demand of Gaya Singh for category VI wages as per the recommendation of the Coal Wage Board.

4. The management's version is as follows. The workman concerned has been working since 1957 and not since 1955 as stated by the workmen. He was originally a Pump Khalasi and thereafter he was transferred to work as a Fitter Helper under Sarafuddin, Fitter at no. 4 Incline. When Sarafuddin left his job the concerned workman worked under another Fitter, named Shew Nath. He was not directed to work as a mechanical fitter in the place of Sarafuddin, nor was he given independent charge of all the machinery. He has all along been a Fitter Helper. The management is not in the least satisfied that he has acquired skill to be placed as Fitter even in Category IV (new) which is the lowest category in Fitters' grade.

5. The management in its written statement has referred to a settlement between the union and the management. It has been stated in para 2(c) of the written statement that by a letter dated 3rd August, 1966 the union, Colliery Mazdoor Sangh raised an industrial dispute regarding non-fixation of proper categories in respect of 23 workmen of Bhowra, North and South, Collieries including the concerned workman, that the dispute was amicably resolved and settled at the intervention of the Conciliation Officer and that a settlement was arrived at on 8th February, 1967. It has been further stated that according to the said settlement Gaya Singh, concerned workman was placed with effect from 6th February, 1967 in category III (old) as per the Mazumdar Award/L.A.T. Decision meant for Fitter Helpers, that he continued to be in category III as Fitter Helper when the Wage Board Recommendations were accepted and implemented with effect from 15th August, 1967 and that as a Fitter Helper in old category III he was given category II (new) as Fitter Helper in accordance with the recommendations of the Wage Board. The further case of the management is that at no point of time the workman concerned was made Fitter in category IV old or new, much less in category IX old, that he all through continued to work as Fitter Helper.

6. There is some controversy between the parties regarding the wages of the concerned workman. The case for the management will appear from the following extract taken from its written statement : "That for adjustment W.B. Scale, *i.e.* new Category II the workman's total emoluments on 1st October, 1966 had to be taken into consideration and the workman to be allowed one increment for every three completed years of service and in any case only three such increments were permissible. The workman concerned's wages in old category III before his adjustment made in category II (new) were :—

Basic	Rs. 1.67 paise	
D.A.	Rs. 1.73 ,,	
V.D.A.	Rs. 1.31 ,,	
Interim Relief	Rs. 0.56 ,,	
Total :		Rs 5.27 paise

The minimum of category II (new) wage is Rs. 5.35 paise and adding Rs. 0.36 paise (Three increments of Rs. 0.12 paise each for past service of the workman concerned the total comes to Rs. 5.71 paise per day). However, by a clerical mistake in totalling, the total was shown as Rs. 6.71 paise instead of Rs. 5.71 Paise and thus a clerical error is too apparent on record. This error escaped detection and this workman continued to be paid Rs. 6.71 paise per day instead of Rs. 5.71 paise. Further yearly increments granted to him were at the rate of Rs. 0.12 paise as prescribed for category II employees under the W.B. Recommendations. With all such increments whereas the total should have been Rs. 6.07 paise as on 1st January, 1971 but with that clerical mistake of Rs. 1/- as pointed above, the total came to Rs. 7.07 paise per day." According to the workman this extra one rupee is paid to him in recognition of his skill as a Fitter; it is not a case of clerical mistake.

7. The real point for determination is whether the concerned workman, Gaya Singh, has the necessary qualifications for being placed in the grade of Mechanical Fitter Category VI as per recommendations of the Coal Wage Board. It is immaterial whether he was in old category III or whether he is at present in new category II. The wages that he is receiving at present are also of little consequence. The alleged settlement between the union and the management before the Conciliation Officer regarding fixation of proper categories of certain workmen of Bhowra, North and South Colliery is not at all relevant. It is not the case of the management that the concerned workman is precluded from claiming category VI by reason of the above settlement. Moreover, there is nothing on record to show that the requirements of sec. 2(p) read with Rule 58 of Industrial Dispute (Central) Rules, 1957 have been fully complied with. It is settled law that the provisions of sec. 2(p) are mandatory. Moreover, the factum of the settlement has been denied by the workmen. It is, however, not necessary for me to enter into the controversy as to whether any such settlement took place between the parties. Again, as a result of the implementation of the recommendations of the Coal Wage Board by the management with the consent, express or implied of the workmen, the alleged settlement before the Conciliation Officer must be deemed to have been abandoned by both the parties.

8. Let me now consider the qualifications of the concerned workman. As far back as 5th February, 1971, the then 1st Class Asstt. Manager of Bhowra Colliery (North) testified to the ability of the concerned workman in the following terms : "This is to certify that I have known Shri Gaya Singh for the last seven years. He has been working in the mechanical section as a Fitter at 9 Seam and has fair knowledge of installation, maintenance and operation of various types of haulage, coal cutting machine, ventilation fans, pumps. In my opinion

he is quite competent in the management of the above kinds of machines. He is efficient, hard working, honest and energetic". This testimonial clearly shows that the concerned workman had been working as a mechanical fitter from before 5th February, 1971.

9. The management in its written statement has made the following comment on the said testimonial of the Asstt. Manager: "That one Shri H. K. Das, who was working as an Asstt. Manager, resigned and he was relieved on 5th February, 1971. The workman concerned obtained a Certificate from the outgoing Asstt. Manager on 5th February, 1971 showing him as a Fitter. This panygerics was given by the outgoing Asstt. Manager without ascertaining from the records as to his real status. This certificate was of no value and did not make him Fitter, which in fact he was not. Except this certificate which is of dubious value, there is nothing to show at any point of time that the workmen concerned ever worked as Fitter and paid as such".

I am not inclined to attach much importance to the above comment of the management. It is difficult to believe that the Asstt. Manager gave the testimonial without caring to ascertain the nature of work performed by the concerned workman. The grievance of the workmen is that even though he was performing the duties of a Fitter he was shown as a Fitter Helper in the records of the management. Therefore, even if it be assumed that the Asstt. Manager gave the testimonial without ascertaining from the record as to the real status of the workman concerned, that does not show that the facts stated in the testimonial are incorrect.

10. We may have some idea as to the qualifications of Gaya Singh from Exts. W4 series. Seven overtime slips have been marked as Exts. W4 series. Ext. W4 is dated 22nd January, 1970. This shows that Gaya Singh worked at 23 H. P. Mono Pump and changed the hose pipe on 21st January, 1970 from 12 night to 3 A.M. for three hours. Ext. W4(a) is dated 13th January, 1971. This shows that Gaya Singh worked overtime on 12th January, 1971 from 12 night to 5 A.M. for five hours, and that he worked at 23 to 30 H.P. Pump and Spray pin. It further shows that he repaired the Foot Valve and fitted spray pin. Ext. W4(b) shows that he worked overtime for 8 hours from 8 A.M. to 4 P.M. on 21st August, 1970 at 9 B Mono Pump. Ext. W4(c) shows that he worked overtime for six hours from 2 A.M. to 8 A.M. on 19th January, 1970 repairing M/C. Chain. This endorsement on Ext. W4(d) is as follows: "O.T. on 20th August, 1970 For working at 9/23 Inc. chain repairing. The C.C. Machine chain repaired and started on 20th August, 1970. From 1 P.M. to 4 P.M. 3 hours. (1) Gaya Singh. Ext. W4(e) is the overtime slip for 19th August, 1970 for changing spitting cutter box of 9 'B' C.C. Machine on 19th August, 1970. In this exhibit, i.e. Ext. W4(e) he has been described as Mechanical Helper. Ext. W4(f) is the overtime slip on 18th August, 1970. Here also the concerned workman has been described as Gaya Singh—M/F Helper. This shows that he worked at MB Incline and repaired the B.J.D. Machine Clutch Exts. 5 to 5(c) also show that he repaired different types of machine working overtime towards the end of 1970. Attention may be drawn to Ext. W10, which is a store requisition slip dated 28th June, 1972. In this exhibit he has been described as M/Fitter and this bears the signature of the Manager.

11. The Exhibits mentioned in the previous paragraph clearly shows that Gaya Singh is capable of repairing various types of machines used in a coal mine. Ext. W10 shows that he earned the reputation of a Fitter even though he was in the category of Fitter Helpers. The oral evidence seems to be overwhelmingly in favour of Gaya Singh. Witness no. 1 for the management is the Engineer of the colliery. He said in his cross-examination that Gaya Singh was transferred to 9 seam in 23 incline most probably in 1969, that he was transferred as a fitter helper and that Dost Mohammad was fitter under whom Gaya Singh was working after his transfer. He, however, went on to say that Dost Mohammad was working in general shift and Gaya Singh worked in 2nd and 3rd shifts alternatively for some time. If Gaya Singh was working under Dost Mohammad, then Gaya Singh could not have worked in 2nd and 3rd shifts alternatively while Dost Mohammad was working in general shift. The evidence of this witness clearly shows that Gaya Singh worked independently of Dost Mohammad.

12. Dost Mohammad was examined as witness no. 4 for the workmen. He said as follows in his examination in chief: "I know Gaya Singh. He worked as a mechanical fitter. Gaya Singh and myself worked in 9/23 incline from 1967 to 1970. Gaya Singh at that time used to work as an independent fitter in shift. I used to work in the general shift and Gaya Singh was either in the 2nd or in the 3rd shift. I did not go to attend any machine in 2nd or 3rd shift". I have no reason to disbelieve the statement of witness no. 4 for the workmen.

13. Shri P. K. Bose, learned Advocate for the management has drawn my attention to the statement of witness no. 1 for the workmen in his cross-examination that according to his knowledge Dost Mohammad was a senior Mistry and Gaya Singh was his junior. He concludes from this that Gaya Singh was merely a mechanical helper under Dost Mohammad. I cannot accept this conclusion. This statement of WW1 really means that Dost Mohammad was senior to Gaya Singh in service; it does not mean that Gaya Singh worked as a mechanical helper under Dost Mohammad.

14. Gaya Singh was placed in category II as per recommendations of the Coal Wage Board. The scale recommended by the Board for category II was made applicable to him with effect from 15th August 1967. His basic wage should have been fixed at Rs. 5.71, but it was fixed at Rs. 6.71. According to the management his basic wage was fixed at Rs. 6.71 through mistake and he was not entitled to have this extra Rs. 1.00 per day included in his basic wage. This mistake, says the management was detected by the Audit Department, Central Office, only in the year 1971. It is difficult to believe that such a glaring mistake continued from August 1967 to February, 1971 without detection. It is more likely that his basic wage was fixed at Rs. 6.71 instead of Rs. 5.71 because he had to perform the duties of a Fitter though his designation was a mechanical Fitter Helper.

15. From the foregoing discussion it is clear that Gaya Singh may be regarded as a highly skilled workman capable of undertaking difficult repair work of coal cutting machine, haulage engines, pumps, mechanical ventilators and other machines and plants. From the evidence of Dost Mohammad, WW4 it is clear that even in 1967 Gaya Singh performed the duties of a highly skilled daily rated workman. Gaya Singh claims that he possesses the necessary skill for being placed in category VI (new). It is not the case of the management that even if his claim is found to be justified he can at best be placed either in category IV or in category V, but not in category VI. Moreover, on the principle laid down by the Supreme Court in Central Bank of India Ltd., and others Vs. Rajagopalan and others, 1963 (II) L.L.J. 89, the status or category of a workman is to be ascertained on the basis of the work actually performed by him and not on the basis of his official designation. I, therefore, have no hesitation in holding that he should have been placed in the Grade of Mechanical Fitter category VI as per recommendations of the Coal Wage Board, and that the action of the management of Bhowra (North) Colliery in refusing to place him in category VI is not justified.

16. Let me now consider the question of relief. He should have been placed in category VI (new) as from the date of implementation of the recommendations of the Coal Wage Board, that is to say, as from 15th August 1967. The present dispute, however, was raised only in February, 1971. The management of Bhowra (North) Colliery vested in the Central Government represented by the Custodian General with effect from the 17th of October, 1971 under the Coking Coal Mines (Emergency Provisions) Ordinance, 1971. Under section 25FF of the Industrial Disputes Act, 1947, the concerned workman ceased to be an employee of Oriental Coal Company Ltd., owner of Bhowra (North) Colliery and became an employee of the Custodian General with effect from the 17th October, 1971. This conclusion is based upon the principle laid down by the Supreme Court in Gurushanthappa Vs. Abdul Kuddus, A.I.R. 1969 S.C. 744. The management of the Colliery again under went a change after the passing of the Cocking Coal Mines (Nationalisation) Act, 1972. Under the said Act of 1972 the management of the colliery vested in the Bharat Coking Coal Company Ltd., with effect from the 1st of May, 1972. Hence the concerned workman ceased to be an employee of the Custodian General and became an employee of the Bharat Coking Coal Company Ltd., with effect from the 1st of May, 1972. So at present the only authority competent to place the concerned workman in new category VI is the

Bharat Coking Coal Co. Ltd. It will not be proper to ask the Bharat Coking Coal Compay to place the concerned workman in category VI with effect from a date earlier than the 1st of May, 1972. I, therefore, think that the ends of justice will be amply met if the concerned workman is directed to be placed in new category VI with effect from the date when the award shall become enforceable under section 17A of the Industrial Disputes Act, 1947. It may be noted that the Bharat Coking Coal Company Ltd., was added as a party to the present proceeding by an order passed on 24th March, 1972.

17. I, therefore, make the following award. The action of the management of Bhowra (North) Colliery of Messrs Oriental Coal Company Ltd., in refusing to place Shri Gaya Singh in the Grade of Mechanical Fitter Category VI as per recommendations of the Coal Wage Board is not justified. The concerned workman is entitled to be placed in the Grade of Mechanical Fitter category VI as per recommendations of the Coal Wage Board with effect from the date when the present award shall become enforceable under section 17A of the Industrial Disputes Act, 1947.

18. Let a copy of this award be forwarded to the Central Government under section 15 of the Industrial Disputes Act, 1947.

A. C. SEN, Presiding Officer.

New Delhi, the 10th November, 1972

S.O. 3861.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal No. 1, Dhanbad, in the industrial dispute between the employers in relation to the management of Murulidih 20/21 Pits Colliery of Messrs. Bengal Coal Company Limited, Post Office Mohuda, District Dhanbad and their workmen, which was received by the Central Government on the 3rd November, 1972.

[No. L-2012/168/71-LRII.]

KARNAIL SINGH, Under Secy.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD

In the matter of a reference under section 10(1) (d) of the Industrial Disputes Act, 1947.

REFERENCE NO. 79 OF 1971

PARTIES :

Employers in relation to Mourulidih (20/21 Pits) Colliery of M/s. Bengal Coal Company Ltd.

AND

Their Workmen.

PRESENT :

Shri A. C. Sen, Presiding Officer.

APPEARANCES :

For the Employers: Shri D. Narsingh, Advocate.
For Bharat Coking Coal Ltd.: Shri P. Choudhury Advocate,
For the Workmen :

and Shri J.K. Banerjee, General Secretary, INMOSSA.

STATE : Bihar INDUSTRY : Coal.

AWARD

The present reference arises out of Order No. L/2012/168/71 LRIII, dated New Delhi, the 22nd November, 1971 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows:—

"Whether the action of the management of Murulidih 20/21 Pits Colliery of Messrs Bengal Coal Company Limited, Post Office Mohuda, District Dhanbad, in dismissing Shri Bijoy Kumar Purkayastha, Mining Sirdar from service with effect from the 31st March, 1971, is justified? If not, to what relief is the workman entitled?".

2. The dispute has been settled out of Court. A memorandum of settlement, dated 30-10-1972 has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be made on the terms and conditions laid down in the Memorandum of settlement. I accept it and make an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under section 15 of the Industrial Disputes Act, 1947.

A. C. SEN, Presiding Officer.

BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1) AT DHANBAD

In the matter of:

REFERENCE NO. 79 OF 1971

PARTIES :

Employers in relation to Murulidih (20/21 Pits) Colliery of M/s. Bengal Coal Company Ltd.

And

Their Workmen.

Memorandum of Settlement

All the parties in present proceedings have amicably settled the dispute involved in the present Reference on the terms hereinafter stated:

(1) That Sri BIJAY Kumar PURKAYASTHA (Mining Sirdar) the workman concerned in the present Reference had been reinstated by the management of Murulidih (20/21 Pits) Colliery of M/s. Bengal Coal Co. Ltd. on and from 24th January, 1972 without any back wages.

(2) That the period intervening from the date of dismissal (which gave rise to the present References) till the date of resumption of duty as noted above shall, for the purpose of continuity of services, be treated as leave without pay, but the workman concerned will be eligible to proportionate leave or quarterly bonus provided he puts in proportionate qualifying attendance during the remaining period of current year or first quarter, as the case may be.

(3) The above terms finally resolve the dispute between the parties and, therefore, there is no subsisting dispute for adjudication in the present Reference.

(4) The parties shall bear their own cost of proceedings.

It is, therefore, prayed that the Hon'ble Tribunal may be pleased to accept this settlement and to give its Award in terms thereof.

For the Employer *For the Workmen*

Illegible Illegible

For Bharat Coking Coal Ltd.

(J.N.P. SAHI)
Labour and Law Adviser
Bharat Coking Coal Ltd.

Dated 30th October, 1972.

New Delhi, the 9th November 1972.

S.O. 3862.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Delhi in the industrial dispute between the employers in relation to the United Commercial Bank and their workmen, which was received by the Central Government on the 1st November, 1972.

[No. L. 12012/30/71-LRIII].

KARNAIL SINGH, Under Secy.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DELHI

PRESENT :
Shri R. K. Baweja,
Central Govt. Industrial Tribunal,
Delhi.

12th October, 1972.

C.G.I.D. No. 4 OF 1971

BETWEEN

The employers in relation to the United Commercial Bank,

AND

Their Workmen.

Mrs. Shyamla Pappu *for the Bank.*

Shri N. C. Sikri *for the Organisation/Union.*

Shri M. K. Ramamurthi *for Shri R. S. Chauhan/workman.*

By Order No. L. 12012/30/71-LRIII dated 31st August, 1971, the Central Government referred for adjudication to this Tribunal an industrial dispute existing between the employers in relation to the United Commercial Bank (hereinafter to be called 'the Bank') and their workmen in respect of the matter specified in the Schedule below:—

"Whether the action of the management of United Commercial Bank Branch Office, Asaf Ali Road, New Delhi in posting Shri R.S. Chauhan, a typist from Connaught Place branch as Accounting Machine Operator over-looking the claims of Shri R.K. Rustogi, Senior most clerk in Asaf Ali Road Branch is justified? If not, to what relief is the said Shri Rustogi entitled?"

2. A statement of claim was filed by the United Commercial Bank Workers' Organisation (Delhi State), (hereinafter to be called 'the organisation') on behalf of the workman Shri R.K. Rustogi on the 7th of October 1971. The Bank filed a written statement in reply to it on the 11th of November 1971 and a rejoinder was filed by the Organisation on the 23rd of November 1971. In reply to the statement of claim the Bank pleaded, *inter alia*, that the Organisation which espoused this dispute on behalf of the concerned workman represented a very small section of the employees of the bank and so, it had no locus standi to raise it. The dispute in respect of the matter specified in the Schedule above was if the posting of Shri R.S. Chauhan, a typist from the Connaught Place branch as accounting machine operator over-looking the claim of Shri R.K. Rustogi, senior most clerk in the Asaf Ali Road branch was justified Shri R.S. Chauhan was the workman affected by this order which is now being challenged before me in these proceedings. On his application, he was, therefore, impleaded as a party by my order dated the 16th of March 1972 and he filed his claim statement on the 21st of March 1972. Besides the term of reference, the only other issue which arose out of the pleadings of the parties was, whether the Organisation could not raise this dispute. So, the following issues were consequently framed:—

1. Whether the United Commercial Bank Workers' Organisation cannot raise this dispute for the reasons given in the written statement?

2. As in the term of reference.

ISSUE NO. 1 :

3. The aggrieved workman Shri R.S. Rustogi according to the allegations in the statement of claim filed by the Organisation on his behalf was appointed a clerk in the Asaf Ali Road Branch of the Bank on the 1st of August 1962. whereas Shri R.S. Chauhan was a typist in the Connaught Place branch of the Bank. According to Shri Rustogi, it has been one of the conditions of employment that the senior most clerk at the branch is always elevated to the higher cadre, especially that of the accounting machine operator carrying among others, the benefit of special allowance in terms of the Desai award as modified by Bi-partite settlement dated 19th October 1966. The special allowance which is attached to the post of accounting machine operator was formerly Rs. 35/- and now it has been raised to Rs. 43/-. It was alleged that at the Asaf Ali Road branch, Shri M.L. Sharma, the permanent accounting machine operator was promoted as a bank grade officer while the senior most incumbent on the clerical side Shri, O. S. Khosla was elevated as a special assistant at the said branch. The Organisation stated that Shri Rustogi because of his seniority and in terms of his service conditions became entitled to the post of accounting machine operator but the Bank contrary to the service conditions which have been in vogue for more than a decade, discriminated against him and instead brought a junior employee Shri R.S. Chauhan who was working as a typist at the Connaught Place branch and appointed him as accounting machine operator in the vacancy caused by Shri M.L. Sharma as bank grade officer. Shri Rustogi made a representation to the regional manager of the Bank at Parliament Street, New Delhi bringing to his notice that he being the senior-most clerk in the branch should have been appointed an accounting machine operator. That representation was rejected. Thereafter his case was taken up by the Organisation. The objection of the Bank and Shri Chauhan is that the Organisation represents a very small section of the employees of the Bank in Delhi and does not represent any employee outside Delhi and that this Organisation has no locus standi to raise the dispute, covered by this reference. It was conceded by Shri, Sikri learned counsel for Shri Rustogi that the Organisation was a minority union and that the United Commercial Bank Employees Association represented the majority of the employees of the Bank. In that connection, the statement of Shri Y. K. Sharma MWI general secretary of the Association may be read. He produced the statement Ext. M/1 which shows that 528 employees of the Bank at Delhi are members of this Association. The all India membership of this Association is 6010 and it is affiliated to the All India United Commercial Bank Employees Federation. Shri M.M.L. Tandon MW3, who is a manager in the assistant general manager's office of the Bank in Delhi also admitted that on the 31st of December 1971 the total number of employees in Delhi branches was 607 So, out of 607 employees in the various branches of the Bank, which I am told number 21, 528 are the members of the Association and the Federation. Shri K.L. Bhambri WW2, general secretary of the Organisation stated that in the Asaf Ali Road branch of the Bank 24/25 employees are the members of this Organisation out of 45 and that Shri Rustogi is its member. He also testified that eleven employees in the Parliament Street branch of the Bank were also its members. So, it was submitted on behalf of the Bank that out of 607 employees in the various branches of the Bank in Delhi according to the admission of the general secretary only 36 were members of the Organisation and under these circumstances they were not sufficient to convert this individual dispute into an industrial dispute. Mrs. Shyamla Pappu in support of her contention relied on a number of authorities. She referred me to a dispute between Gandhara Transport Company (Private), Ltd. and State of Punjab and others (1968. I.LLJ. 457). It was held by the Punjab High Court that in order to constitute an industrial dispute within the meaning of the Act, the cause of the affected workmen must either be espoused by the Union of the employers' establishment or by a considerable number of members or appreciable section of that establishment. Five out of sixty workmen of the establishment had espoused the cause of the aggrieved workman in that case which was held to be not an appreciable number. Similarly, she referred me to another dispute between Vazir Sultan Tobacco Company, Ltd., Hyderabad and State of Andhra Pradesh and others (1964. I. LLJ. 622). In that case, the workman was dismissed in October 1957. The dispute in regard to the dismissal was taken up by 104 co-workmen out of 2170 workmen in the establishment It was espoused by a union of which workmen in other similar establishments

were members, after a delay of 4 1/2 years. The matter went in writ and it was held by the High Court of Andhra Pradesh that the inordinate delay in making the reference was both unreasonable and unjustified. It was further observed that 104 out of 2170 employees in the establishment could not be said to be sufficient to convert the individual dispute into an industrial dispute. Shri Sikri on behalf of the Organisation, however, submitted that in the establishment where the workman was the employee, there were only 45 employees and as 24/25 were members of the Organisation, the latter was fully competent to espouse his cause. I feel that this submission of Shri Sikri is correct. For the purpose of this reference, the employees of other branches are not to be taken into consideration. The grievance of the workman is that according to the terms and conditions of his service, a senior-most employee in the branch had to be appointed the accounting machine operator, a post which carries a functional allowance of Rs. 43|- per month. So, if the majority of employees of that branch as represented by the Organisation undertakes to espouse the cause of Shri Rustogi it cannot be said that the dispute has not been converted into an industrial dispute. Apart from that, the Bank has also been negotiating with this Organisation and has been entering into settlements. In that connection, reliance was placed on a settlement dated the 23rd of June 1971 which was entered into between the Bank and the general secretary of this Organisation. A copy of that settlement is Ext. W|1 and it was, therefore, rightly pointed out by Shri Sikri that as this Organisation represented an appreciable number of workmen of the establishment, the Bank entered into a settlement with it. After giving my careful consideration, I am inclined to take the view that the membership of the employees of the Bank as a whole is not to be seen for determining the point in controversy in the present case, whether the dispute is an industrial dispute or not, but it is the membership of that particular branch, the senior employee of which is stated to have been adversely affected, is to be kept in view and if an appreciable number of members of that branch took up the cause of the workman the individual dispute stands converted into an industrial dispute. It is on record that the Organisation in its proceedings which were attended by 21 members on the 14th of November 1970 decided to take up the case of Shri Rustogi vide Ext. W|5. It also passed a resolution on the 15th of November, 1970 of which a copy is Ext. W/6. I. therefore, see no merit in the objection raised by the Bank that the Organisation cannot raise this dispute. The issue is, therefore, decided against it.

ISSUE No. 2 (TERM OF REFERENCE):

4. The grounds on which Shri Rustogi claims his appointment as accounting machine operator have already been given above and need not be repeated. He is, no doubt, a graduate while Shri Chauhan is a matriculate and was a typist before his appointment as accounting machine operator in another branch of the Bank. I was told during the course of arguments that he was appointed a typist on the 24th of January 1960. Even if a weightage of two years is given to Shri Rustogi for his being graduate and his seniority is counted from the 1st of August 1960 though he actually joined on the 1st of August 1962, yet Shri Chauhan was senior to him in the sense that he was appointed before Shri Rustogi was appointed. But the case of the workman was that the seniority in a particular branch was to be seen while appointing an incumbent to the post of accounting machine operator and the seniority of others in other branches was not to be considered. It admits of no doubt that after the appointment of Shri Khosla who was the senior-most clerk in the Asaf Ali Road branch as special assistant on the 20th of October 1970, Shri Rustogi had become the senior-most clerk in that branch. But on the 21st of October 1970 instead of appointing him, Shri Chauhan was transferred from the Connaught Place branch and appointed as accounting machine operator in the Asaf Ali Road branch. It is conceded that both are in the same scale of pay and it is only the special functional allowance of Rs. 43|- per month which is attached to the post of the accounting machine operator. In the statement of claim, it was alleged that it had been one of the conditions of employment that a senior-most clerk at the branch was always elevated to the post of accounting machine operator. It was conceded by Shri Sikri, learned counsel for the workman, that in no letter of appointment issued to any clerk of the Bank any such condition was incorporated. He, however, drew my attention to para. 5.282 of the Desai award where the categories of workmen who are entitled to functional allowance are given. It is provided that an accounting machine operator will be entitled to Rs. 20|- per month as special allowance which, as already stated above, has been raised to Rs. 43|- per month. These allowances have been given to the various categories of clerical employees but the typists have been excluded. But this award does not provide that the accounting machine operator should be the senior-most clerk of a particular branch where the machine is to be operated. I was also referred to a settlement dated 19th October, 1966 between certain banking companies and their workmen which is commonly known as the Bi-partite settlement. The bank was one of the banking companies and party to it and so, is bound by that settlement. Para 5.2 of this settlement provides that in supersession of paragraph 5.282 of the Desai award the special allowances payable to workmen other than the members of the subordinate staff, for duties|responsibilities as listed in Part I of Appendix B hereto, shall be as given therein. There various functional allowances have been prescribed for the various categories of staff and the allowance attached to the post of an accounting machine operator was raised to Rs. 35|- per month. Para 5.6 lays down that the special allowances prescribed above are intended to compensate a workman for performance or discharge of certain additional duties and functions requiring greater skill or responsibility, over and above the routine duties and functions of a workman in the same cadre. Here also there is no provision that a senior-most clerk of a branch will be entitled to this allowance if he has to perform the duties of an accounting machine operator. I may add here that a machine operator is in the same category as a clerk. In fact, he gets this allowance while operating the accounting machine. Neither in the Desai Award nor in the Bi-partite settlement, there is any direction by the Adjudicator that the senior-most clerk of a branch should always be appointed as an accounting machine operator. So, it can be safely held that the action of the Bank in appointing Shri Chauhan who was the senior-most typist in the Delhi Region did not contravene any provision of the Desai Award and the Bi-partite settlement.

5. Shri Sikri when confronted with this situation, submitted that even if his client had failed to establish that it was one of the conditions of service that a senior-most clerk of the branch should always be appointed an accounting machine operator and that no provision of the Desai Award or the Bi-partite settlement was contravened, still it was a practice in the Bank which had always been followed, and so, it could not be ignored to the detriment of the concerned workman. In support of his submission, he drew my attention to para 12 of the statement of claim where it was shown that nine clerks were appointed as accounting machine operators in their respective branches as they happened to be the senior-most clerks.. It may be mentioned here that out of 21 branches of the Bank in Delhi only three branches namely, Parliament Street Branch, Asaf Ali Road Branch and Chandni Chowk Branch have accounting machines. Shri Bhambri in his cross-examination could not say if they were the senior-most clerks in their branches when they were appointed accounting machine operators. But this contention of Shri Sikri finds its full support from the statement of Shri K. L. Kapur MW 2, general secretary of another union under the name of United Commercial Bank Employees Union which has 125 members on its rolls amongst the employees of the Bank. He deposed that it was correct that in some cases the practice had been to appoint a senior-most clerk. He also admitted that Sarvashri M. L. Sharma, Prem Chand, Richhpal Singh, R. K. Jain and M. S. Gupta were the senior-most clerks and on account of that seniority, they were appointed as accounting machine operators. Even in the written statement in para. 7 it was admitted by the Bank that the vacancies of the accounting machine operation had been filled previously by posting the senior-most clerks in the accounts department. But it was added that as the efficient operation of the accounting machine required proficiency in typing and as, in terms of the agreement referred to above entered into by the Bank with the majority unions, the accounting machine operators were covered by special provisions under which they were treated differently from the clerks in the accounts department for purposes of seniority, and that on review and pursuant to an understanding, the Bank decided that typists should be appointed the accounting machine operators who unlike clerks were not eligible for inclusion in the seniority list of the accounts department in the normal course. I shall refer to this settlement between the majority union and the Bank later on. But at this stage it is sufficient to say that so far in the three branches of the Bank and the evidence leads to that

conclusion, senior-most clerks have been appointed as accounting machine operators.

6. An agreement was arrived at between the two majority unions namely, All India Bank Employees' Association and All India United Commercial Employees Federation and the Bank on 6th December 1968 of which a printed copy is Ext. M|3. In Part-1, Para. 1 of this settlement the word, "promotion" was defined. It means a transposition of an employee from a lower cadre to a higher cadre involving a higher scale of pay. So, the appointment of a clerk as account machine operator cannot be said to be promotion in as much as the cadre remains the same and only a functional allowance is permitted to such operators. It is further provided in Part-II, Para. 1 of this agreement that the grant of a functional special allowance does not constitute promotion and an employee performing duties which attract a functional special allowance in terms of the Bi-partite settlement shall continue to be in the clerical or subordinate cadre as the case may be. This also indicates that if an incumbent gets some functional special allowance, according to the Bi-partite settlement, it is not a promotion so as to adversely affect the interest of anybody. Then in Part II under the head, "Lists of Seniority", it is provided that the Bank will maintain on a regionwise basis two separate seniority lists for the clerical cadre—one for the cash department and the other for the remaining departments—subject to the provisions of clause IV below relating to special categories. The special cadres are given in clause IV and they include an accounting machine operator. So, it is obvious that the seniority of the employees in the special cadre is to be maintained separately and they are not eligible for the post of special assistants to which a clerk is promoted and to which a functional allowance of Rs. 43|- is attached. It is further provided that no case for transfer to the clerical side, even if all the requirements specified therein are duly fulfilled, shall be considered unless the employee agrees in writing to forego any special allowance that he may be receiving in one or the other of functional special allowance categories. The requirements are that in respect of employees in the special categories, the Bank may, subject to the exigencies of its work, consider transferring them to the clerical side in the accounts departments as and when vacancies arise in the region, provided they answer certain requirements. Shri Ramamurthy, learned counsel for Shri Chauhan and Mrs. Shyamla Pappu for the Bank vehemently contended that if the Bank deviated from its previous practice of giving functional special allowance to a senior clerk in a branch on his appointment as an accounting machine operator then there was nothing sinister or malafide in it. The object was to give some functional special allowance to the typists as they were not eligible for the various posts which carried functional special allowance until certain requirements were fulfilled. So, in order to give some benefits to this category of employees, it was decided by the Bank in consultation with the majority unions that henceforth senior-most typist in the region should be given this functional special allowance on his appointment as accounting machine operator. After this understanding with the majority unions, some of the senior-most typists have been appointed as accounting machine operators and it was admitted by Shri Bhambri that besides Shri Chauhan, Sarvashri Kanwar Ram, Bal Govind, R. K. Kohli, N. K. Jain and B. V. Bhutt who were typists were appointed as machine operators. Shri Chauhan was admittedly the senior-most typist in the region and so, when a vacancy of accounting machine operator occurred in the Asaf Ali Road branch, he was appointed and similarly five other senior typists in the region got this job. Shri Bhambri could not say if on the appointment of these persons as accounting machine operators, any other clerk of the branch had protested. Shri Tandon MW 3 who is manager has stated that it was considered that a typist would operate the accounting machine more efficiently than a clerk. Shri Sikri, however, drew my attention to the duties of an accounting machine operator as given in Appendix B, Part I Clause (viii) of the Bi-partite Settlement and submitted that a clerk is much more efficient to perform those duties than a typist. Be that as it may, it is the management's function to see as to which category of employees can perform these duties efficiently. It is not the case of Shri Rustogi only that any discrimination has been made against a senior clerk but as a result of the change of the policy of the Bank based on an understanding with the majority unions and in view of the fact that it had been considered that the typists should also have some posts carrying functional special allowance that deviation occurred in the previous policy under which the senior-most clerks were appointed to these posts as accounting machine operators. A senior clerk has no vested right for his being appointed to this post and if after eight or nine years the Bank has selected some other category of employees for this job then the clerks can have no grievance, particularly when it is not a promotional post.

7. Shri Sikri attacked this settlement and stated that though it was entered into by the majority unions, it was not binding on the minority union inasmuch as it was not arrived at during the course of conciliation proceedings. This proposition of law is well established that if a settlement or an agreement is arrived at between the management and the workmen then it is only binding on those workmen who are parties to it. So, the employees who are members of the majority union will certainly be bound by that settlement but not the members of the Organisation. But if the settlement is fair and is just, I do not think that it should be struck down simply because some of the members who are in minority are opposed to it. I may add here that Shri Rustogi claims his seniority on account of his being graduate under this settlement and not under the Desai award or the Bi-partite settlement of October 1966. He states that his date of appointment should date back to the 1st of August, 1960 as he is a graduate because otherwise he was appointed on the 1st of August 1962. He cannot blow hot and cold in the same breath by saying that the settlement is not binding on him because his union was not a party to it and at the same time claim the benefit of seniority under it. After this settlement, it seems there was some discussion between Shri V. R. Desai, Dy. General Manager of the Bank and the general secretary of the Federation, the majority union. Shri Desai in his letter dated the 22nd of October (1969) informed the general secretary that the Bank as a result of the discussion had come to the conclusion that it should consider posting of typists as accounting machine operator after some training and subject to fulfilment of certain conditions vide Ext. M|4. It was in pursuance of this policy which the Bank, it is stated, adopted as a result of discussion with the majority union, that it started appointing senior-most typists in the region as accounting machine operators Shri Sikri strenously contended that this letter was a fabrication and had been prepared subsequently to strengthen the case of the Bank and the majority unions. He drew my attention to this fact that it was not produced before the conciliation officer and argued that had it been in existence, the Bank should have placed it on the record. Shri R. N. Kapur RW1, vice president of the United Commercial Bank Employees' Association on the other hand deposed that he was in Calcutta and represented the Association in the discussions preceding the agreement contained in Ext. M|4 and that it had been accepted by the overwhelming majority of the members of his Association. He continued that there was no uniform policy of the Bank for the appointment to the post of accounting machine operators and there was some confusion. So, the discussions took place resulting in the proceedings contained in Ext. M|4. He gave instances where the senior-most clerks were not appointed as accounting machine operators. After going through all this evidence I am inclined to take the view that generally in the three branches in Delhi senior-most clerks were appointed as accounting machine operators but there may be some instances as stated by Shri Kapur that senior clerks were not given this job. I have, however, no reason to hold that omission on the part of the Bank to produce a copy of this decision as contained in Ext. M|4 before the Conciliation Officer is a sufficient ground to doubt the genuineness of this document. Considering the entire evidence I am disposed to take the view that the Bank in deciding that the senior-most typists in the region be given this job in future was not actuated by any *mala fide* motive, that the senior clerks had other avenues of promotion to posts carrying higher allowance and that it was just and fair that the typists who had no such avenues should be given posts having some functional special allowance. Shri Rustogi had acquired no right for his appointment as an accounting machine operator and consequently his claim was not justified. The reference is, therefore, answered against

him and he is not entitled to any relief in these proceedings. The award is made accordingly.

(Sixteen pages)

12th October, 1972 R. K. BAWEJA,
Central Govt. Industrial Tribunal, Delhi.

New Delhi, the 10th November, 1972

S.O. 3863.—In pursuance of section 17 of the Industrial disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the management of Bankota Colliery of Messrs Burrakar Coal Company Limited, Post Office Ukhra, District Burdwan and their workmen, which was received by the Central Government on the 9th November, 1972.

(AWARD)

[No. L-19012/37/71-LRII]
KARNAIL SINGH, Under Secy.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

REFERENCE No. 116 OF 1971

PARTIES :

Employers in relation to the management of Bankola Colliery of Messrs. Burrakur Coal Company Limited

AND

Their workmen

PRESENT :

Sri S. N. Bagchi—Presiding Officer.

APPEARANCES :

On behalf of the Employers: Sri Monoj K. Mukherjee, Advocate.

On behalf of the Workmen: Sri B. S. Azad, General Secretary of the Union.

STATE : West Bengal INDUSTRY : Coal Mine

AWARD

By Order No. L/1912/37/71-LRII, dated 18th November, 1971, the Government of India in the Ministry of Labour and Rehabilitation (Department of Labour and Employment), referred the following industrial dispute existing between the employers in relation to the management of Bankola Colliery of Messrs Burrakar Coal Company Limited, and their workmen, to this Tribunal, for adjudication, namely :—

"Whether the demand of the Munshies and Shot Firers of Bankola Colliery of Messrs. Burrakur Coal Company Limited, Post Office Ukhra, District Burdwan that they should be paid full wages for the 6th, 7th, 10th, 11th, 12th August, 1970 and upto the second shift of the 14th August, 1970 is justified? If so, to what relief are the workmen concerned entitled?"

2. Mr. Mukherjee, learned Advocate for the management and Mr. B. S. Azad, General Secretary of the union, both present. Mr. Azad withdraws the objection against the appearance of Mr. Mukherjee on behalf of the management. Regarding costs which I ordered on 9th October, 1972, Mr. Azad submits that there has been a mutual settlement on the point. So, no cost is pressed.

3. Both the parties have entered into a compromise over the subject matter in dispute duly signed for and on behalf of the management by its learned Advocate and for and on behalf of the Union representing the workmen by Sri B. S. Azad, General Secretary of the Union. I heard the learned Advocate and Sri Azad. Considered the compromise which I find contains terms which are beneficial to the interest of the workman, and are just and fair. Hence I record the compromise and render an award in terms of the compromise petition which shall form part of the award.

This is my award.

Dated, November 2, 1972.

S. N. BAGCHI, Presiding Officer.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE No. 116 OF 1971

PARTIES :

Employers in relation to the management of Bankola Colliery

AND

Their Workmen

The humble joint petition of the parties above named most respectfully sheweth :—

1. That without prejudice to their respective contentions, the parties have amicably settled their dispute, which form the subject matter of instant reference, on the following terms :—

(a) That the demand of the Munshis and shot firers for full wages in respect of the days mentioned in the reference is unjustified.

(b) That the said workmen however will be paid as an ex-gratia payment, a sum equal to their full wages for the days mentioned in the reference, after deducting the amount of lay off compensation paid to them for the said period.

(c) That the parties shall bear their own costs of the reference.

(d) That the workmen has no other claim or claims in respect of the subject matter of the present reference.

2. That the above terms are just, reasonable and fair.

In the circumstances the parties pray that the Hon'ble Tribunal may be pleased to pass an Award in terms of the above compromise treating this petition as a part of the Award.

And as in duty bound, the parties shall ever pray.

Representing Employers.	Representing Workmen.
M. K. MUKHERJEE,	B. S. AZAL,
Advocate.	General Secy.
2-11-1972.	2-11-1972.

New Delhi, the 10th November, 1972

S.O. 3864.—In exercise of the powers conferred by section 8 of the Minimum Wages Act, 1948 (11 of 1948) read with section 9 of the said Act and rule 3 of the Minimum Wages (Central Advisory Board) Rules, 1949, the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Labour and Rehabilitation (Department of Labour and Employment) No. S.O. 2373, dated the 19th June, 1972, namely:—

In the said notification—

(i) under the heading "Independent Members",

(a) for entries 7 and 8, the following entries shall be substituted, namely :—

"7. Shri Binayak Acharya, Minister for Labour, Employment and Housing, At/PO, New Capital, Bhubaneswar, District Puri.

8. Shri Hari Ram, I.A.S., Labour Commissioner, Punjab, Chandigarh".

(b) for entries 9 and 12, the following entries shall be substituted, namely :—

"9. Shri D. Y. Munawar, Labour Commissioner, Madhya Pradesh, Indore.

12. Shri J. V. Vyas, I.A.S., Commissioner of Labour, Gujarat, Multistoreyed Building, Lal Darwaja, Ahmedabad".

(ii) under the heading "Representatives of Employers", for entry 13, the following entry shall be substituted, namely :—

"13. Mr. K. N. Sircar, Calcutta Adviser, Indian Tea Association, Royal Exchange, 6, Netaji Subhas Road, Calcutta-1."

(iii) under the heading "Representatives of Employees", for entry 25, the following entry shall be substituted, namely:—

"25. Shri C. G. Karmarkar, General Secretary, Assam Cha Mazdoor Sangha, P. O. Dibrugarh (Assam)".

[No. S-32023(2)/72-WE (MW)]

HANS RAJ CHHABRA, Under Secy.

नई दिल्ली, 10 नवम्बर, 1972

का० आ० 3864 —न्यूनतम मजदूरी अधिनियम, 1948 (1948 का 11) की धारा 9 के साथ पठित उक्त अधिनियम की धारा 8 और न्यूनतम मजदूरी (केन्द्रीय सलाहकार बोर्ड) नियम, 1949 के नियम 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, भारत सरकार के श्रम, रोजगार और पुनर्वास मंत्रालय (श्रम और रोजगार विभाग) की अधिसूचना सं० का० आ० 2373, तारीख 19 जून, 1972 में एतद्द्वारा निम्नलिखित संशोधन करती है, अर्थात् :—

(1) उक्त अधिसूचना में—"स्वतन्त्र सदस्य" शीर्षक के नीचे (क) प्रविष्टि 7 और 8 के स्थान पर निम्नलिखित प्रविष्टियां रखी जाएंगी।

"7 श्री विनायक आचार्य मंत्री श्रम, रोजगार और आवास, मुकाम/डाकघर नई राजधानी, भुवनेश्वर, जिला पुरी

8 श्री हरिराम आई० ए० एस०, श्रम आयुक्त, पंजाब, चंडीगढ़"

(ख) प्रविष्टि 9 और 12 के स्थान पर निम्नलिखित प्रविष्टियां रखी जाएंगी, अर्थात् :—

"9. श्री डी० वाय० मनखर
श्रम आयुक्त
मध्य प्रदेश
इन्दौर

"12. श्री जे० वी० व्यास, आई० ए० एस०,
श्रम आयुक्त गुजरात, बहु मंजिला भवन, लाल दरवाजा, अहमदाबाद।"

(ii) नियोजकों के प्रतिनिधि शीर्षक के नीचे, प्रविष्टि 13 के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात् :—

"13. श्री के० एन० सरकार, कलकत्ता, सलाहकार, इन्डियन टी एसोसिएशन, रायल एक्सचेंज, 6, नेताजी सुभाष रोड, कलकत्ता-1"।

(iii) "कर्मचारियों के प्रतिनिधि—शीर्षक के नीचे, प्रविष्टि 25 के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात् :—

"25 श्री सी० जी० करमरकर महासचिव, असम चाय मजदूर संघ, डाकघर डिब्रुगढ़ (असम)"।

[एल-32023(2)/72-डब्ल्यू ई (एम डब्ल्यू)]

हंस राज छाबड़ा, अवर सचिव

New Delhi, the 10th November, 1972

ORDER

S.O. 3865.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Messrs. Froilane C. R. Machado and Sons, Stevedores, Vasco-da-Gama, Goa and their workmen in respect of the matters specified in the Schedule hereto annexed;

AND, WHEREAS, the Central Government considers it desirable to refer the said dispute for adjudication;

NOW, THEREFORE, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal, No. 2, Bombay, constituted under section 7A of the said Act.

SCHEDULE

"Whether the action of the management of Messrs. Froilane C. R. Machado and Sons, Stevedores, Vasco-da-Gama, Goa in dismissing Shri Paixao Manezes, Ex-Foreman, with effect from the 27th April, 1971, is justified? If not, to what relief is the workman entitled?

[No. L-36012/2/72-P&D]

S. SANKARALINGAM, Under Secy.

नई दिल्ली, 10 नवम्बर, 1972

आदेश

का० आ० 3865 —यतः केन्द्रीय सरकार की राय है कि इस से उपाबद्ध अनुसूची में विनिर्दिष्ट विषयों के बारे में मैसर्स फ्रोइलेनों सी० आर० मचाडो एण्ड सन्स, स्टेवेडोर्स वास्को-डी-गामा, गोवा के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच एक औद्योगिक विवाद विद्यमान है;

और यतः केन्द्रीय सरकार उक्त विवाद को न्यायनिर्णयन के लिए निर्देशित करना वांछनीय समझती है;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10 की उपधारा (1) के खण्ड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा उक्त विवाद को उक्त अधिनियम की धारा 7-क के अधीन गठित केन्द्रीय सरकार औद्योगिक अधिकरण सं० 2, बम्बई को न्यायनिर्णयन के लिए निर्देशित करती है।

अनुसूची

क्या मैसर्स फ्रोइलेनो सी० आर० मचाडो एण्ड सन्स, स्टेवेडोर्स, वास्को-डा-गामा के प्रबन्धतंत्र की, श्री पाईक्साओ मनेजेस, भूतपूर्व फोरमैन को 27 अप्रैल, 1971 से पदच्युत करने की कार्यवाही न्यायोचित है? यदि नहीं, तो कर्मकार किस अनुतोष का हकदार है?

[सं० एल-36012/2/72-पी० एण्ड० डी०]

वी० शंकरालिंगम, अवर सचिव

New Delhi, the 7th November, 1972

S.O. 3866.—Whereas the State Government of Bihar has in pursuance of clause (d) of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), nominated Shri Ishwari Prasad, Secretary to the Government of Bihar, Department of Labour and Employment to represent that State on the Employees' State Insurance Corporation, in place of Shri I. N. Thakur.

Now, therefore, in pursuance of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Minstry of Labour, Employment and Rehabilitation (Department of Labour and Employment) S.O. No. 2763, dated the 27th May, 1971, namely:—

In the said notification, under the heading "(Nominated by State Governments under clause (d) of Section 4)", for the entry against item 9, the following entry shall be substituted, namely:—

"Shri Ishwari Prasad,
Secretary to the Government of Bihar,
Department of Labour and Employment, Patna."

[No. U-16012/11/72-HI]

नई दिल्ली, 7 नवम्बर, 1972

का० आ० 3866 :—यत बिहार राज्य सरकार ने कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 के खण्ड (घ) के अनुसरण में श्री ईश्वरी प्रसाद, सचिव, बिहार सरकार, श्रम और रोजगार विभाग को श्री आई० एन० ठाकुर के स्थान पर कर्मचारी राज्य बीमा निगम में उस राज्य का प्रतिनिधित्व करने के लिए नामनिर्दिष्ट किया है।

अतः अब, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा भारत सरकार के श्रम, रोजगार और पुनर्वास मंत्रालय (श्रम और रोजगार विभाग) की अधिसूचना सं० का० आ० 2763, तारीख 27 मई, 1971 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में "(राज्य सरकारों द्वारा धारा 4 के खण्ड (घ) के अधीन नामनिर्दिष्ट)" शीर्षक के नीचे मद 9 के सामने की प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात :—

"श्री ईश्वरी प्रसाद,
सचिव बिहार सरकार,
श्रम और रोजगार विभाग, पटना"

[यू० 16012(11)72-एच० आई०]

The 10th November, 1972

S.O. 3867.—In exercise of the powers conferred by sub-section (3) of section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 26th day of November, 1972 as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already been brought into force) and Chapters V and VI (except sub-section (1) of section 76 and 77 to 79 and section 81 which have already been brought into force) of the said Act, shall come into force in the following areas in the State of Orissa, namely :—

The area within the limits of Berhampur Municipality in Ganjam District consisting of the following revenue villages, namely :—

1. Gosani Nuagaun.
2. Bijipur.
3. Lanjipali.
4. Pankalapalli.
5. Baidyanathpur.
6. Bhapur.
7. Sankarpur.
8. Berhampur in Ganjam District.

[No. S-38013(18)/71-HI]

DALJIT SINGH, Under Secy.

दिनांक, 10 नवम्बर, 1972

का० आ० 3867 —कर्मचारी राज्य बीमा अधिनियम 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, 1972 के नवम्बर के 26वें दिन को एतद्द्वारा उस तारीख के रूप में नियत करती है जिसको उक्त अधिनियम के अध्याय 4 (धारा 44 और 45 को छोड़कर जिन्हें पहले ही प्रवृत्त किया गया है) और अध्याय 5 और 6 (धारा 76 की उपधारा (1) और धारा 77 से 79 तक और धारा 81 को छोड़कर जिन्हें पहले ही प्रवृत्त किया गया है) के उपबन्ध उड़ीसा राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे अर्थात् :—

गंजाम जिले में बरहमपुर नगरपालिका की सीमाओं के अन्दर का क्षेत्र जिसमें निम्नलिखित राजस्व गांव शामिल हैं अर्थात् :—

1. गोसानी नुआगांव
2. बिजीपुर
3. लाँजीवाली
4. पानकालापल्ली
5. बैद्यनाथपुर
6. भापुर
7. संकरपुर
8. गंजाम जिले में बरहमपुर।

[संख्या एस०-38013(18)/71-एच० आई०]

दलजीत सिंह, अवर सचिव

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